

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

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MICHAEL KINGLSEY,

Plaintiff,

-vs-

Case No. 10-CV-832-BBC

STAN HENDRICKSON
and FRITZ DEGNER,

Madison, Wisconsin
October 15, 2012
1:14 p.m.

Defendants.

* * * * *

STENOGRAPHIC TRANSCRIPT OF SECOND DAY OF JURY TRIAL
AFTERNOON SESSION
HELD BEFORE DISTRICT JUDGE BARBARA B. CRABB, and a jury

APPEARANCES:

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I-N-D-E-X

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1 (Continuation of jury trial - afternoon session)

2 THE COURT: Mr. Jones.

3 MR. JONES: On the handcuffing issue, as I
4 understand it, the point is just to show how one might
5 double lock a set of handcuffs, which I don't think we
6 have a problem with that. But I do have a concern that
7 the jury needs to be told that what they're seeing is,
8 and maybe not in these words, how you would double lock
9 a set of handcuffs, all things being equal in a perfect
10 situation. And it's not apples to apples with what was
11 occurring in the cell when Mr. Kingsley was being
12 handcuffed.

13 THE COURT: Yeah, and I think that would be
14 most appropriately brought out by you on
15 cross-examination.

16 MR. JONES: I certainly will.

17 THE COURT: I don't think it's appropriate for
18 me to say that. You know, if you want me to say
19 something like these are not the same -- we don't know
20 whether these are the same kinds of handcuffs that were
21 used.

22 MR. JONES: I don't know that it's an issue in
23 terms of handcuffs A versus handcuffs B. It's just that
24 it's a completely different circumstance.

25 THE COURT: But I think that part should be

1 brought out by you.

2 MR. JONES: We had talked about a particular
3 instruction. You had suggested it, Ed.

4 MR. PARDON: Yeah. I mean if the Judge was
5 going to give an instruction, I would hope it would be
6 something very neutral like this is not necessarily the
7 situation that happens in a jail. You know, we also can
8 illustrate -- I mean I'm sure Mr. Landers can also
9 explain that as well. I mean I understand their
10 concern.

11 THE COURT: All right. If you would bring in
12 the jury.

13 (Jury brought in courtroom at 1:15 p.m.)

14 (Lieutenant Conroy resumes witness stand)

15 THE CLERK: This Honorable Court is again in
16 session. Please be seated and come to order.

17 THE COURT: Mr. Jones.

18 MR. JONES: Thank you, Judge.

19 CONTINUED DIRECT EXAMINATION

20 BY MR. JONES:

21 Q Lieutenant, we have again up on the screen the
22 video from the cellblock, and I'm going to ask
23 Mr. Posnanski to go ahead and start playing it.

24 (Video played)

25 So who is it that's coming down the cellblock at
ROBERT CONROY - DIRECT

1 this point?

2 A That's me.

3 Q What are you doing here?

4 A Somebody in the first cell asked me a question and
5 I stopped to answer the question before I made my way
6 down the rest of the block.

7 Q Who's at the cellblock behind you at the other end?

8 A I'm not sure. Whoever was manipulating the doors
9 or closing the doors for me at that point.

10 Q So where are you positioned -- in front of which
11 cell are you positioned now?

12 A Currently positioned in front of Mr. Kingsley's
13 cell. Directly in front of me is the sliding cell door.
14 To the left of that is the bars, and that's where his
15 head is, right next to those bars.

16 THE COURT: I'm sorry, would you say that
17 again?

18 THE WITNESS: Right next to the bars on the
19 left side of the sliding door is where Mr. Kingsley's
20 head is.

21 THE COURT: Should we be able to see that? See
22 his head?

23 BY MR. JONES:

24 Q Can you see his head?

25 A You cannot.

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1 THE COURT: Okay.

2 A The way the position of the bars are or the way of
3 the camera.

4 Q So before I start playing it again, is he directly
5 on the other side of the bars from you?

6 A Correct.

7 Q And his head is closer to the bars?

8 A Correct.

9 Q So can you tell us what's occurring at this point?

10 A I'm trying to reason with Mr. Kingsley, say hey,
11 you know, can you just take the paper down? I
12 understand, you know, that you were told to take it
13 down. I think at one point I even motioned up there.

14 Mr. Kingsley came back and said he did not put it
15 there. He was, under no uncertain terms, said he was
16 not going to take it down and told me that I could take
17 it down.

18 Q What are you looking up at?

19 A The light. Pointing at the light and looking up at
20 it.

21 Q How many times during this sequence did you ask him
22 to take it down?

23 A The entire time we were talking to him about it I
24 was trying to get him to comply and he kept saying he
25 had not done anything wrong. He didn't put it up there.

ROBERT CONROY - DIRECT

1 It was there before he got in the cell. He wasn't going
2 to take it down.

3 Q So before we stopped the video, a white screen came
4 on. It's gone now. I'll ask you about it again when we
5 start up again.

6 A Okay.

7 Q It's your testimony that he never agreed to take
8 the light or the paper off the light; is that correct?

9 A It's my testimony that he stated numerous times he
10 was not going to take it down.

11 Q You also testified that he mentioned that he wasn't
12 the one who put it up; correct?

13 A Correct.

14 Q And I think you answered in response to one of
15 Mr. Pardon's questions that you didn't -- you didn't
16 disbelieve him at that point; correct?

17 A I didn't disbelieve him, no.

18 Q Did it matter to you whether or not he had put it
19 up there?

20 A No. The whole purpose was just to get him to take
21 it down.

22 Q And did he tell you while you were in front of his
23 cell that he felt he was too short to take it down and
24 that it might present a danger to him to do that?

25 A No, I don't recall that. The light is -- I mean
ROBERT CONROY - DIRECT

1 you could stand on the bunk and touch the light. It's
2 right -- centered in the cell right there. You could
3 stand on the bunk and touch it, so...

4 Q If he had said that to you, what would you have
5 done?

6 A I would have done probably the same thing I did,
7 was "hey, we'll get you out of the cell and I'll take it
8 down," because I said that at one point.

9 Q That's ultimately what you told him would happen;
10 correct?

11 A Yes.

12 Q And did he respond to that statement from you?

13 A I told him in order for that -- in order for us to
14 do that, that we would have to move him to receiving for
15 a couple different reasons; one, to serve as
16 disciplinary sanctions that he was currently sitting,
17 and the other, so I could go in and do that. And
18 Mr. Kingsley was not going to cooperate.

19 Q What do you mean by the last part of your answer,
20 *Mr. Kingsley was not going to cooperate?*

21 A He was not going to cooperate with the move from
22 the cell he's currently here in on the video to the
23 receiving cell to serve that disciplinary sanction for
24 failure to follow orders.

25 Q Is that what you're saying he said?

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1 A That's what he was saying all along, that he wasn't
2 going to cooperate.

3 Q Why, if you were going to take the paper down
4 yourself, why would it be necessary to move him from the
5 cell?

6 A At least get him out of that cell was the purpose.
7 I wasn't going to go in there; that's the way we're
8 trained. You don't go into a cell with an inmate in
9 there.

10 Q And why would it be necessary, given what had
11 happened up until that point, that he be put somewhere
12 to serve out a discipline?

13 A Well, we had to get in there and get that off the
14 light. It had already been since the night prior, so...

15 Q Maybe I asked a bad question. Why would it be
16 necessary for him to serve any sort of discipline as a
17 result of what had happened?

18 A For failure to follow directions of jail staff,
19 which is in the rule book in the jail. It's for safety
20 and security of the jail. If you go in and -- you know,
21 it's a safety and security issue. You're telling
22 somebody to do something, they don't do it, and you
23 don't do anything about it, it tends to spread
24 throughout the blocks. Then all of a sudden everybody
25 and nobody is doing anything. So it's for the security

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1 of the facility.

2 Q So I believe you testified that you then left the
3 cellblock and told the other officers that it was going
4 to be necessary to come back in and move Mr. Kingsley?

5 A Correct.

6 Q And that's what happened; correct?

7 A Yes.

8 Q Why was it necessary for a group of officers to
9 assist in moving Mr. Kingsley?

10 A One, for safety purposes. That's the way we're
11 trained. A show of presence sometimes gets people to
12 comply. So we have the presence and the dialogue, and
13 at times that does get people to comply.

14 Q I'm going to go back to the video. Now the video
15 is playing, but we're seeing this screen. What is this
16 screen?

17 A That is the GeoVision screen I spoke about earlier
18 where it would show to fill in the time. You see at the
19 bottom the time is still going, 5:21:10, so that's
20 filling in the blank space where there was not adequate
21 enough movement for it to record to the hard drive.

22 Q So what are we watching at that point?

23 A That's the second entry at 6:38. The first to
24 enter is Sergeant Hendrickson, then Deputy Blanton and
25 Deputy Degner is behind him. Sergeant Hendrickson is

ROBERT CONROY - DIRECT

1 trying to get him to come up to the door and back up to
2 the door so he can be handcuffed at this point.

3 Q Now there are two officers at the other end of the
4 hallway, the walkway. Who are those two individuals?

5 A That would be Sergeant Shisler and myself.

6 Q Could you hear what was being said by the officers
7 in front of the cell from where you were?

8 A I could hear what the officers were saying. I
9 could tell that Mr. Kingsley was saying stuff, but I
10 can't really make out what he was saying at this point.

11 Q And what did you hear -- I'll back up. Who was
12 doing the talking at that point?

13 A Sergeant Hendrickson at this point.

14 Q What you did you hear him saying?

15 A To stand up and back up to the bars so he could get
16 handcuffed. There's a pass through there, an open area
17 in the bars where you can stick your hands through and
18 you can actually get handcuffed through the bars.

19 THE COURT: So at this point, it's not clear to
20 me, at this point the door to Mr. Kingsley's cell is
21 closed; is that correct?

22 THE WITNESS: Correct.

23 THE COURT: Okay.

24 BY MR. JONES:

25 Q Are the doors to all of the cells closed at this
ROBERT CONROY - DIRECT

1 point?

2 A They are.

3 Q And those doors were first closed when you
4 originally came into the cellblock a few minutes before
5 this?

6 A All except for Mr. Kingsley's. His was closed
7 because he was on -- serving the discipline in here.

8 Q Okay. Let me back up. When would Mr. Kingsley's
9 cell door have been closed pursuant to that original
10 discipline?

11 A Before I arrived his door was closed.

12 Q Okay. And the other inmates' doors were open --

13 A Correct.

14 Q -- before you arrived?

15 A Yeah, I believe so, yes.

16 Q And then when you first came onto the cellblock,
17 the part of the video we saw originally, that's when
18 everyone else's doors were closed?

19 A Yes.

20 Q And at that point again all the doors were closed?

21 A Correct.

22 Q You were talking about what Sergeant Hendrickson
23 was saying to Mr. Kingsley. Am I correct in
24 understanding that Sergeant Hendrickson would have been
25 able to put the cuffs on from this side, from his side

ROBERT CONROY - DIRECT

1 of the closed cell door if Mr. Kingsley had backed up to
2 the cell door?

3 A There's an opening big enough to fit a tray through
4 for food and it's, I don't know, 4 inches by 12 inches.
5 So when you put your hands up there, you can reach
6 through and put handcuffs on, the officer can do that,
7 yes.

8 Q Without opening the cell door.

9 A Correct.

10 Q Okay. We'll start the video again. Now at a point
11 a few seconds before where we stopped, a light started
12 to shine on the floor; correct?

13 A Yes.

14 Q Do you know what that light is from?

15 A The light is from the taser that Deputy Degner was
16 holding.

17 Q Okay. And from where the light is does that tell
18 us anything about where the taser was pointed?

19 A Towards the floor.

20 Q That's because the light is shown in the direction
21 the taser is being pointed?

22 A Correct.

23 Q And it's Officer Degner with the taser?

24 A Correct.

25 Q I'd like you to watch that light while the video
ROBERT CONROY - DIRECT

1 plays.

2 (Video played)

3 Okay. So we stopped the video, and what's
4 occurring at this point?

5 A The door to Mr. Kingsley's cell is opening.

6 Q At any point between -- at any point in the video
7 as we've watched the light, did you see that light being
8 pointed into the cell?

9 A No.

10 Q At any point while we watched that video did you
11 see the light being pointed at Mr. Kingsley?

12 A No.

13 Q So if the light wasn't pointed at Kingsley, was the
14 taser pointed at Mr. Kingsley at any point before the
15 cell door opened?

16 A No.

17 MR. PARDON: Objection.

18 THE COURT: What was your objection?

19 MR. PARDON: We're asking a witness to describe
20 a video, not necessarily what the witness witnessed.

21 THE COURT: That's a good point. You can ask
22 the question in terms of what he remembers.

23 BY MR. JONES:

24 Q At any point before the cell door was opened did
25 you see Officer Degner point the taser at Mr. Kingsley?

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1 A No.

2 Q So I'm going to move ahead a little. What happened
3 after the cell door was opened?

4 A Sergeant Hendrickson and Deputy Blanton entered the
5 cell. Deputy Degner went to the doorway, I went around
6 to where I could observe him, and him being Mr. Kingsley
7 lying on the bunk.

8 Q And where I stopped the video, at this point are
9 you shown on the screen?

10 A I believe that's me just to the left. Would be --

11 Q Front left?

12 A Front left, yes.

13 Q And could you see inside the cell at this point?

14 A Yes.

15 Q And I want to be clear on what you saw or didn't
16 see when you were looking -- I'll back up. Were you
17 looking inside the cell as the officers went in to
18 handcuff Mr. Kingsley?

19 A Yes.

20 Q And I want to be clear on what you saw or didn't
21 see. Could you see anything relating to Mr. Kingsley's
22 physical movements during that time period?

23 A Yes.

24 Q And what did you see?

25 A I saw his arms -- after I had told him to put his
ROBERT CONROY - DIRECT

1 arms behind his back, which I did at one point, he put
2 them kind of at the side of his buttocks, at the outer
3 side of his buttocks. I could see that. I could see
4 the tension in his arms. That's what I could see.

5 Q And did he move his arms from your observation when
6 the officers went in to handcuff him?

7 A No, he kept them straight.

8 Q So he kept them at his sides, not together behind
9 his back?

10 A Correct.

11 THE COURT: Who is coming down the hallway?

12 THE WITNESS: I believe that's Sergeant Shisler
13 leaving.

14 THE COURT: Oh, okay.

15 THE WITNESS: Going back out.

16 BY MR. JONES:

17 Q Why don't we go ahead and start the video again
18 from this spot.

19 (Video played)

20 So ultimately the officers did get the handcuffs on
21 Mr. Kingsley; correct?

22 A Correct.

23 Q And what occurred next?

24 A They told him to stand. Deputies told him to
25 stand. He refused to stand. Stated it was his -- his

ROBERT CONROY - DIRECT

1 foot hurt. They tried to inquire what was wrong with
2 his foot. He wouldn't answer. So at that point they
3 proceeded to carry him out of the cell.

4 Q From your observation as you were looking in the
5 cell, did you see anything happen to injure
6 Mr. Kingsley's foot as the officers put the handcuffs on
7 him?

8 A No.

9 Q You said that the officers asked him what was wrong
10 with his foot?

11 A During this whole time from the time we entered at
12 6:38 until we left the receiving cell, when I asked
13 everybody to leave and leave the handcuffs on several
14 times, multiple times we asked him what was wrong with
15 his foot. He would not answer.

16 Q And specifically in the cell before he was removed
17 from the cell, did he give -- did the officers ask him
18 what was wrong with his foot?

19 A Yes.

20 Q Did Mr. Kingsley at any point before he was removed
21 from his original cell answer that question to say what
22 was wrong with his foot?

23 A The only thing I ever recall Mr. Kingsley saying
24 about his foot is "my foot, my foot."

25 Q And physically how was it -- who was it that
ROBERT CONROY - DIRECT

1 carried Mr. Kingsley out of the cell?

2 A Sergeant Hendrickson and Deputy Blanton carried him
3 out of the cell.

4 Q How did they carry him?

5 A I believe it was under his arms, and Mr. Kingsley's
6 feet were kind of up. He wouldn't straighten them out.
7 He kept them up.

8 Q So what are we seeing as this video plays now?

9 A That is Sergeant Shisler all the way down. Then
10 Deputy Blanton, Sergeant Hendrickson, they're carrying
11 Mr. Kingsley. I'm following behind, and then Deputy
12 Degner is behind me and he has the taser on it looks
13 like.

14 Q So it's about 6:43 when you have him out of the
15 cellblock?

16 A Correct.

17 Q So what happened once he was out in the hallway?

18 A Once he was out in the hallway, we laid him out on
19 the floor. He was laying there face down. We asked him
20 again what's wrong with your foot. I asked him. Other
21 officers asked him. He wouldn't respond. Just groaned
22 and like u-r-r-r kind of sounds. Didn't sound like
23 painful sounds, but it was like a growl kind of.

24 Q At any point in the hallway did he explain what was
25 wrong with his foot and why he was unable to walk?

ROBERT CONROY - DIRECT

1 A No. We asked him several times. He wouldn't
2 answer us.

3 Q I'd like to play another section of video for you.
4 (Video played)

5 So what advantage point do we have here?

6 A This is from the main office of the jail looking
7 down that main hallway. You're actually looking north
8 down that hallway.

9 Q So looking back to that diagram we looked at
10 earlier, it's from the bottom of the diagram up to the
11 top of the diagram?

12 A Correct.

13 Q And there's audio on this recording; correct?

14 A There is.

15 Q So what happened from this point forward out in the
16 hallway?

17 A Mr. Kingsley still wouldn't cooperate, wouldn't
18 talk to us. We kept asking him -- I think there was
19 three of us, at least three of us that were asking him
20 which foot, what was wrong with his foot. He wouldn't
21 answer. At that point, we decided to pick him up and
22 carry him to receiving. So there would have been two
23 people at his shoulders, and then I was at his left leg
24 and Sergeant Shisler was at his right leg.

25 MR. PARDON: Excuse me, Your Honor. May I
ROBERT CONROY - DIRECT

1 approach the bench for a moment?

2 THE COURT: Sure.

3 (Discussion at side bar at 1:38 a.m.)

4 MR. PARDON: I'm very sorry. I don't want to
5 interrupt. But I don't recall this being on our
6 exhibit.

7 THE COURT: This particular video?

8 MR. PARDON: This video.

9 MR. JONES: It was on your exhibit. If not,
10 I'll introduce it through our --

11 MR. PARDON: Have I seen this video before?

12 MR. JONES: Sure, you have. It was produced
13 and it's on the copy of the disk that we gave you as our
14 exhibit. It was produced in discovery.

15 MR. PARDON: Well, I'm not aware of that, but
16 I'm not going to argue now in front of the jury now that
17 the thing is here. But I guess why don't you -- why
18 don't you, when you're done, move to admit this. I'm
19 sorry, if I'm mistaken I'm mistaken, but I don't ever
20 recall this being on anything. So I mean I'll believe
21 you.

22 MR. JONES: Okay.

23 MR. PARDON: Thank you.

24 (End of side bar discussion at 1:40 p.m.)

25 THE COURT: You may resume.
ROBERT CONROY - DIRECT

1 (video continued to be played)

2 BY MR. JONES:

3 Q So you're making a turn here, a right turn from the
4 officer's perspective, and you're going where?

5 A Correct. We're going into the receiving area, the
6 area just outside the cells in the receiving area.

7 (Video played)

8 Q The video recordings that we've seen so far, those
9 are recordings that you have preserved off of the
10 recording system at the jail?

11 A They're copies of, yes.

12 Q And do they accurately depict what occurred in the
13 cellblock and in the main hallway of the jail that
14 morning?

15 A They do.

16 MR. JONES: I'd move the admission of those two
17 videos as Exhibit 520, Your Honor.

18 MR. PARDON: No objection.

19 THE COURT: Received.

20 BY MR. JONES:

21 Q Earlier when Mr. Pardon was asking you questions,
22 we saw a recording of Mr. Kingsley then being carried
23 through the entryway of the receiving area of the jail;
24 correct?

25 A Yes.

ROBERT CONROY - DIRECT

1 Q And you were the officer carrying Mr. Kingsley or
2 supporting him at his left leg; correct?

3 A Correct.

4 Q As you were carrying Mr. Kingsley into the
5 receiving cell, what, if any, observations did you make
6 about the positioning of the handcuffs?

7 A The positioning of the handcuffs at all?

8 Q Yes.

9 A That they were tight, and by tight I mean the chain
10 was taunt and that the one handcuff was kind of up
11 towards the middle of his hand. His arms were pulling
12 them apart and the one handcuff was up, kind of leaning
13 towards the middle of his hand.

14 Q And what, if anything, did the positioning of that
15 one handcuff tell you about how tight or loose they
16 were?

17 A It was actually a little loose to be in that
18 position.

19 Q If I understood your testimony from this morning,
20 you remained outside of the receiving cell when the
21 officers went in with Mr. Kingsley?

22 A I stood in the doorway there. I think Deputy
23 Degner was behind me for a minute, but I was in the
24 doorway. Then when he went in, I kind of actually
25 backed out a step. So I was just outside the doorway,

ROBERT CONROY - DIRECT

1 yes.

2 Q And did you stay in the doorway for the remainder
3 of what happened in the receiving cell?

4 A Yes.

5 Q I think from your testimony earlier, I think this
6 is clear but I want to be sure. Could you see
7 everything that was occurring in the receiving cell from
8 your advantage point?

9 A No. I couldn't see everything, no.

10 Q And why was that?

11 A It was blocked by deputies. Their bodies were
12 actually blocking my view. I'd have to look in between
13 them.

14 Q You testified earlier that when the officers put
15 Mr. Kingsley into the receiving cell, they then
16 attempted to take the handcuffs off; correct?

17 A Correct.

18 Q Why were the officers attempting to remove the
19 handcuffs at that time?

20 A We're trained never to leave somebody in a cell by
21 themselves with the handcuffs on, especially behind
22 their back because they could injure themselves. If
23 they were to fall, they couldn't catch themselves;
24 really serious injury could come of it. So that's the
25 way we're trained.

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1 Q Have you ever left someone in a cell with handcuffs
2 on before this incident?

3 A I have in a holding cell where, you know, there's
4 an officer in there and they're being prepared for
5 transport I have, but never in a cell by themselves, no.

6 Q You were asked some questions about what you saw or
7 didn't see Mr. Kingsley doing in the receiving cell?

8 A Yes.

9 Q And I think you testified that you could not see if
10 he tried to bite Sergeant Hendrickson; correct?

11 A Correct.

12 Q Do you know one way or the other whether he tried
13 to bite Sergeant Hendrickson?

14 A Just off the conversation that Sergeant Hendrickson
15 and I had.

16 Q I'm going off of what you could or could not see in
17 the receiving cell yourself.

18 A I do not know.

19 Q Is it possible that he did?

20 A Yes.

21 MR. PARDON: Objection.

22 THE COURT: Sustained. The jury will disregard
23 that.

24 BY MR. JONES:

25 Q Could -- strike that. What were the officers
ROBERT CONROY - DIRECT

1 saying, if anything, to Mr. Kingsley as they were trying
2 to remove the handcuffs?

3 A Multiple times "Stop resisting. Just relax" was
4 said on a number of occasion. I think "Mike, I'm going
5 to -- this is the last time. Stop resisting. Stop
6 resisting."

7 Q Did you hear Mr. Kingsley make any -- did you hear
8 Mr. Kingsley say anything?

9 A Yes.

10 Q And what did you hear him say?

11 A "Just leave the handcuffs on and get the fuck out,"
12 something to that effect.

13 Q Did you hear him make any sounds as the officers
14 were trying to handcuff him?

15 A Like an angry sound, like a g-r-r-r, you know, like
16 a growl-type sound. Aggressive sound.

17 Q Did you ever hear Mr. Kingsley say, while this was
18 going on in the receiving cell, that he was in pain?

19 A No.

20 Q Did you ever hear him say while this was going on
21 in the receiving cell that he could not comply with what
22 the officers were asking him to do?

23 A No.

24 Q As you were watching what was occurring in the
25 receiving cell, did you have any concerns as the senior
ROBERT CONROY - DIRECT

1 officer on the scene about what was happening?

2 A The only concern I had at the point was the
3 possibility of injury.

4 Q And what concern, if any, did you have on that
5 point?

6 A Well, everything in that cell is concrete. From
7 what I could see with Mr. Kingsley's movements, I could
8 see him -- his upper body going back and forth, kind of
9 like he was trying to, you know, I don't know, break a
10 grasp or something to get around the officers' control
11 measures. You could see him lift his torso in an effort
12 to push away from the bunk, you know, kind of -- I was
13 worried. You know, he could have rolled. He could have
14 hit his head. There's a two-inch metal lip on the side
15 of that bunk that somebody could have gotten hurt on.

16 Officers could have -- Sergeant Hendrickson, at the
17 time Sergeant Hendrickson could have -- you know, he had
18 his leg up there. His leg could have came down, you
19 know, and hit that metal bar along the side of the bunk.
20 It sticks up about two inches. The whole cell is
21 concrete.

22 Q I'd like to show you a different exhibit, Exhibit
23 509B. Do you recognize what's depicted in Exhibit 509B?

24 A I do. That's a receiving cell in the Monroe County
25 Jail.

ROBERT CONROY - DIRECT

1 Q And is that the receiving cell Mr. Kingsley was put
2 in?

3 A Yes.

4 Q Do all the receiving cells look alike?

5 A There's one that the toilet is in a different
6 position, but they generally would look the same, yes.

7 Q Okay. I think there's a second page to this
8 exhibit. What does Exhibit 509B show?

9 A That's a little closer of that cell, with the sink,
10 the toilet, the bunk. The metal lip is that gray area
11 on the shelf above there.

12 Q Does it accurately depict the inside of a receiving
13 cell in the Monroe County Jail?

14 A It does.

15 MR. JONES: I move for the admission of Exhibit
16 509B, Your Honor.

17 THE COURT: Any objection?

18 MR. PARDON: No objection.

19 MR. JONES: May I publish it to the jury?

20 THE COURT: You may.

21 BY MR. JONES:

22 Q So again, the concrete bunk in the cell, where is
23 that depicted here?

24 A It's on the left side, lower left side. You can
25 see a little lip there towards the back of the cell.

ROBERT CONROY - DIRECT

1 That lip goes all the way around. That's where the
2 mattress goes so it doesn't slide off. But that's the
3 bunk.

4 Q And the walls and the floor, what are they made out
5 of?

6 A It's all concrete.

7 Q And the material that the sink and the toilet are
8 encased in, what is that?

9 A That's concrete.

10 Q Mr. Kingsley did not punch anyone during this
11 incident, did he?

12 A No.

13 Q He didn't actually kick anyone during the incident,
14 did he?

15 A No.

16 Q And he never verbally said he was going to hurt
17 anybody, did he?

18 A No.

19 Q So can you explain why still there was a concern in
20 your mind of a risk of injury?

21 A Well, as I said before, you know, it's not only a
22 risk to the injury of the officers, but a risk of injury
23 to Mr. Kingsley as well. He could have rolled into that
24 concrete wall. He could have hit his bunk or could have
25 hit his head on the bunk. He could have rolled off.

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1 You can see -- and I witnessed during that time as
2 Sergeant Hendrickson was trying to stabilize
3 Mr. Kingsley, you can see him adjusting his movements so
4 that, you know, based on Mr. Kingsley's movements, he's
5 trying to adjust his. He's standing on one leg. He
6 could have fallen. He could have, you know, been hurt.
7 Mr. Kingsley could have started kicking, you know.
8 There's a variety of different injuries that could have
9 occurred.

10 Q And in the video that Mr. Pardon played for you or
11 for us, where you were standing outside the receiving
12 cell and then we heard the audio of what was going on,
13 do you remember that video?

14 A Yes.

15 Q At some point during that video you made mention of
16 something you called *the chair*?

17 A Yes.

18 Q Can you tell us exactly what you were referring to?

19 A A chair in that aspect is something we use. It's
20 called a *restraint chair*. And you sit down on it, the
21 back and seat are padded. But in order to use that,
22 your arms are restrained to the arms of the chair and
23 your legs are restrained to the chair. It's for, I
24 guess, uncontrollable subjects at that point and
25 suicidal subjects as well as, you know, to prevent

ROBERT CONROY - DIRECT

1 people from criminal damage to property, that kind of
2 thing.

3 Q Can you put someone who is in handcuffs behind
4 their back in the restraint chair that you have at the
5 jail?

6 A No, you'd have to remove them.

7 THE COURT: Remove the handcuffs you're saying.

8 THE WITNESS: Correct.

9 Q And once the person is in the chair, how are their
10 arms restrained?

11 A I believe they're nylon straps.

12 Q Where are they restrained in the chair?

13 A They're restrained one on each wrist; one that goes
14 around the ankles or each ankle; there's one that goes
15 over the belt and then it crisscrosses over the
16 shoulders. So you're sitting there kind of like this.
17 (Indicating)

18 Q So their hands have to be free and unrestrained in
19 order to put them in the chair.

20 A Correct.

21 Q You mentioned the chair during this incident in the
22 receiving cell. You never put him in the chair, did
23 you?

24 A No.

25 Q Why not?

ROBERT CONROY - DIRECT

1 A Because for that short period of time I thought it
2 might have been an option. It just became not an option
3 when we couldn't get the handcuffs off.

4 Q Now I think at some point you testified that you
5 directed that the officers stop trying to remove the
6 handcuffs?

7 A Correct.

8 Q And you directed them that you were just -- they
9 were going to exit the cell and leave the handcuffs on;
10 yes?

11 A Yes.

12 Q And there was some questions about a comment you
13 made that you said was, in essence, to the camera. Do
14 you remember that?

15 A Yes.

16 Q And that was a reference that you made to this not
17 being punishment?

18 A Yes.

19 Q When you said it's not a punishment, what were you
20 referring to?

21 A I wanted it on record that this is not a
22 punishment. Handcuffs are never to be used as a
23 punishment. Leaving somebody in a cell with handcuffs
24 on is never to be done as a punishment. It's in our
25 policy that handcuffs are not to be used as a

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1 punishment, and I wanted that to be clear.

2 Q Were you leaving Mr. Kingsley in the receiving cell
3 with handcuffs on as a punishment or not?

4 A No.

5 Q Were you referring at all to the use of the taser
6 when you made the comment about *this is not a*
7 *punishment*?

8 A No.

9 Q Was there any force from your observation that was
10 used once you gave the order for the officers to leave
11 the receiving cell?

12 A No. There was no force used.

13 Q And how long did Mr. Kingsley then stay in the
14 receiving cell with the handcuffs on?

15 A Approximately 12 minutes.

16 Q And during those 12 minutes was he monitored at
17 all?

18 A He was.

19 Q How?

20 A By video in the jail office stream of this video,
21 continuous stream. Whether it's recorded or not, you
22 can live view it from the office.

23 Q And who was watching him?

24 A I was. Excuse me. I was.

25 Q And what did you observe in those 12 minutes?

ROBERT CONROY - DIRECT

1 A One movement where he actually rolled to his left.
2 Minor movements other than that; whether it be his
3 fingers or something, but they were really minor.

4 Q And at some point then, somebody went back to the
5 receiving cell?

6 A Correct. There was four of us.

7 Q Who went back?

8 A Deputy Bentinbau (ph), Deputy Tom Wilds, Deputy
9 Blanton, and myself.

10 Q Why were different officers used or why did
11 different officers go back to the receiving cell than
12 were originally in the cell?

13 A Shift changes at seven o'clock was one reason and
14 we had different officers there. For another reason, I
15 thought it would be better that different officers went
16 back there and tried to de-escalate the situation.

17 Q Why did you think that would be better?

18 A At times sometimes when different officers go in, a
19 different rapport is generated between two people. So I
20 thought I would give it a chance.

21 Q And what happened when you went back to remove the
22 handcuffs?

23 A Deputy Bentinbau went back and he secured the legs.
24 Deputy Tom Wilds secured the upper part of
25 Mr. Kingsley's body. I took the handcuffs off, and I

ROBERT CONROY - DIRECT

1 believe Deputy Blanton came in, as I was taking the
2 handcuffs off, and secured Mr. Kingsley's right hand as
3 I was taking the other handcuff off his left land.

4 Q Did anything else occur or was anything else
5 important in terms of removing the handcuffs?

6 A Mr. Kingsley was still resisting. He still had
7 resistive tension in his arms. He still had clenched
8 fists, so he was still resistive.

9 Q But you were able to get the cuffs off?

10 A Yes.

11 Q After the cuffs were removed, was Mr. Kingsley
12 monitored at all from that point forward?

13 A He was monitored by video. He was placed on an
14 administrative watch, 15-minute watch, and then I think
15 later that day that was changed to a half-an-hour watch.
16 The nurse was contacted and the nurse came and checked
17 on him as well.

18 Q What was the purpose of putting him on a 15 and
19 then a 30-minute watch?

20 A Just to observe him, to watch his actions.

21 Q And how long did that continue?

22 A The 15-minute watch I believe lasted until -- I
23 don't think it was quite 10:30 in the morning. And the
24 30 -- then it went from a 15-minute to a 30-minute
25 watch, and then it continued for awhile. I'm not sure

ROBERT CONROY - DIRECT

1 exactly how long.

2 Q I'd like to show you what's been marked as Exhibit
3 513. Can you tell us what Exhibit 513 is?

4 A This is a -- this is a watch log, one of the logs
5 that we use in the jail when somebody is on a watch.
6 This is -- what you have to do in this case, depending
7 on if it's a 15, 30, 45-minute watch, at least in that
8 many increments -- if he's on a 15-minute watch, at
9 least once every 15 minutes you have to go eyes on where
10 you're actually seeing him. There's nothing in the way.
11 The rest of the time it's on video, but at least every
12 15 minutes you'd have to actually be there to actually
13 physically see him.

14 And then if it was 30 minutes, every 30 minutes you
15 would have to actually be there. So what you do is you
16 document the time, who did it, and a code, which is
17 basically what you saw at that time.

18 MR. JONES: I move the admission of Exhibit
19 513.

20 MR. PARDON: No objection.

21 THE COURT: Received.

22 MR. JONES: Permission to publish the exhibit.

23 THE COURT: You may.

24 BY MR. JONES:

25 Q So just to fill in the picture, what's shown in the
ROBERT CONROY - DIRECT

1 first column of the exhibit? What's recorded rather.

2 A The first column being the left-hand column.

3 Q Yes.

4 A That is the time that the -- you went to the cell
5 to check on him.

6 Q And the second column from the left?

7 A That is the badge number of the person who actually
8 checked on him.

9 Q Okay. And 1270, who is that?

10 A 1270 is Deputy Blanton.

11 Q And who's 1277, if you remember?

12 A You know, I don't know.

13 Q And then the third column is code; correct?

14 A Correct. That's the observation code at the
15 bottom, which a lot of those are 17. So then you look
16 at the bottom and you look under No. 17. It says *alert*
17 *but quiet*, so that's the actions that he did at that
18 time.

19 Q Okay. And what time does the document reflect that
20 the watch was started?

21 A 0644.

22 Q And what time does it reflect that the watch ended?

23 A It looks like 1404, which would be 2:04 p.m.

24 Q And in the code column of the exhibit there are
25 some written entries, but then there are some entries

ROBERT CONROY - DIRECT

1 that are only numbers; correct?

2 A Correct.

3 Q And the entries that have a 3 next to them, what
4 does that reflect?

5 A That reflects that he was sleeping.

6 Q And the entries that have a 17?

7 A Alert but quiet.

8 Q I think there's 121 at the end. What does that
9 reflect?

10 A Talking and seems fine.

11 Q There's an entry at 7:05. Do you see where I am
12 with an asterisk next to it?

13 A Yes.

14 Q What does that entry reflect?

15 A I can't see what it actually says. It looks like
16 it says *called*.

17 Q Maybe we can zoom in on it a little bit. So the
18 7:05 entry, what does that entry reflect?

19 A *Called the nurse*.

20 Q Why don't you go ahead and read the other
21 handwritten entries.

22 A Looks like 644 he was *moved to receiving*. 0645 I
23 believe that says *was tased*. At 648 I can only see
24 that -- it looks like *movement*, but I can't recall
25 what's after that. 659 it says *removed handcuffs*. Was

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1 *breathing. Saw chest rise. Hands were a little red*
2 *from -- can't see that. Circulation from being*
3 *handcuffed. That one word I can't make out. Then it*
4 *says move of arm under body.*

5 Q You read part of the entry about the hands. Could
6 you read the rest of the entry? It goes over to the
7 left-hand column and continues.

8 A Where it says *hands a little red from*, and that
9 word I can't make out, something, *circulation from being*
10 *handcuffed and resisting.*

11 Q I'd like to show you Exhibit 512. What is Exhibit
12 512?

13 A Exhibit 512 is our shift log. It's a computized
14 generated -- computer-generated shift log where we make
15 entries of cell checks, significant notations in the
16 jail.

17 Q And for what day is this shift log?

18 A May 21st, 2010. It starts at ten minutes after
19 midnight.

20 MR. JONES: I'd move the admission of 512, Your
21 Honor.

22 MR. PARDON: I don't know if Lieutenant Conroy
23 knows anything about how these entries were made on this
24 shift log or if he made them or can testify as to what
25 they mean.

ROBERT CONROY - DIRECT

1 MR. JONES: I can clarify, if necessary.

2 THE COURT: All right. Why don't you.

3 BY MR. JONES:

4 Q How is it that officers, if you know, make entries
5 on the shift log?

6 A They are generized -- or generated in the computer.
7 You put in your number -- you sign on, you put in your
8 number, and then you type in a comment. Some of the
9 comments are already done like *cell checks*, you can just
10 hit cell checks and it will be automatically generated.
11 Once the comments are in there, you can't change them.

12 Q And is this shift log created as part of the normal
13 operations of the jail each day?

14 A Yes. I believe it's required by code.

15 Q Is it maintained by the jail as a normal part of
16 its admissions?

17 A Yes.

18 MR. JONES: I would move the admission of
19 Exhibit 512, Your Honor.

20 MR. PARDON: No objection.

21 THE COURT: Received.

22 BY MR. JONES:

23 Q Were there any medical personnel on staff in the
24 jail back in May of 2010?

25 A We had a county-employed nurse as well as a doctor.
ROBERT CONROY - DIRECT

1 Q And the nurse, who was that?

2 A Vicki Bethke.

3 Q And is Ms. Bethke still employed by the county as a
4 nurse?

5 A No.

6 Q To your knowledge did Ms. Bethke see Mr. Kingsley
7 that day?

8 A Yes.

9 Q How did that come about?

10 A After the incident, I believe I told Deputy Blanton
11 to call her and notify her so she could check on him.

12 Q I'd like to show you what's been marked as Exhibit
13 514. Do you recognize Exhibit 514?

14 A Those are medical notes that we keep in the jail.

15 Q And do you know how these medical notes were
16 generated?

17 A Yeah. They're handwritten by the jail nurse.

18 Q And are these notes or notes of this type created
19 in the regular course of the nurse's duties for the
20 jail?

21 A They are.

22 Q And are they preserved by the Sheriff's Department
23 in the normal course of its business?

24 A They're preserved in the medical unit and either
25 the medical staff or myself have the key for that.

ROBERT CONROY - DIRECT

1 MR. JONES: I'd move the admission of Exhibit
2 514, Your Honor.

3 MR. PARDON: I'm going to object.

4 THE COURT: Sustained.

5 BY MR. JONES:

6 Q Lieutenant Conroy, did Mr. Kingsley request any
7 medical tension -- medical attention from you that day?

8 A No.

9 MR. JONES: Those are all my questions. Thank
10 you.

11 THE COURT: Mr. Pardon, anything else?

12 MR. PARDON: Yes. A few questions, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. PARDON:

15 Q Lieutenant Conroy, you were able to remember a lot
16 more of Mr. Kingsley's actions when Mr. Jones asked you
17 about them than what I did; correct?

18 MR. JONES: Objection. Argumentative.

19 THE COURT: Sustained.

20 BY MR. PARDON:

21 Q When you first got in to the jail, when you first
22 came into the jail on the morning of the 21st, you spoke
23 with Sergeant Hendrickson about Mr. Kingsley; correct?

24 A Correct.

25 Q And I think you testified that Sergeant Hendrickson
ROBERT CONROY - CROSS

1 had told you about a comment that Mr. Kingsley
2 supposedly made about the CERT team was going to have to
3 come in; correct?

4 A I believe he told me that on the phone, yes.

5 Q Okay. And you personally never heard that comment
6 from Mr. Kingsley; correct?

7 A No.

8 Q In fact, it was your understanding that Sergeant
9 Hendrickson had not actually heard that Mr. Kingsley
10 made that comment; isn't that correct?

11 A Correct.

12 Q And you -- after you came in and spoke with
13 Sergeant Hendrickson, at some point you had a briefing
14 with the other officers that were going to go into the
15 cell to move Mr. Kingsley; correct?

16 A After I spoke to Mr. Kingsley I met with the other
17 officers, yes.

18 Q In fact, you don't even know if the CERT team
19 comment was raised at the briefing; right?

20 A What briefing?

21 Q The briefing you had with the officers before you
22 went to move Mr. Kingsley from the cell.

23 A I don't believe it was.

24 Q Okay. So it wasn't really that big of a concern at
25 the time right before you went into the cell; correct?

ROBERT CONROY - CROSS

1 A I think it was a concern, yes.

2 Q It wasn't enough of a concern that you had raised
3 it and discussed it with the other officers right before
4 you went in; correct?

5 A I believe they already knew. I was briefed by
6 those officers that it happened.

7 Q Okay. I just want to make sure I understand. You
8 don't know that the comment about the CERT team wasn't
9 even discussed before you went into the cell; correct?

10 A Right beforehand, no.

11 Q Okay. And you indicated that when the officers
12 went into the cell, Sergeant Hendrickson and Deputy
13 Blanton to do handcuffing, that Mr. Kingsley kept his
14 arms straight; right?

15 A He kept them straight and by the side of his
16 buttocks, yes.

17 Q And he was tensing his straight arms; is that your
18 testimony?

19 A He was tensing his arms.

20 Q Okay. But you didn't again actually see the
21 handcuffing procedure; correct?

22 A The actual handcuffs going on, no. I saw his arms.

23 Q All right. And just to back up a little bit, when
24 you spoke with Mr. Kingsley personally, you know, on
25 your own, and you talked about removing the paper and

ROBERT CONROY - CROSS

1 the fact that he was going to go to receiving, it's
2 correct to say that a decision had already been made to
3 send him to receiving; correct?

4 A When I originally went in to speak to him, no, that
5 decision wasn't made in my head, no.

6 Q Okay. Could you take out your deposition, please.

7 A Yes.

8 Q I direct you to page 36 of your deposition. And
9 again, you were under oath when you gave a deposition
10 here in this case; correct?

11 A Yes.

12 Q I'm going to read, beginning at line 12 of page 36.
13 And if you could look at the context. This is in
14 reference to your discussion with Mr. Kingsley; is it
15 not?

16 A Starting at Number 12 or -- Do you want me to back
17 up a little bit?

18 Q Well, starting at Number 12, we're talking about
19 your conversation with Mr. Kingsley; correct?

20 A Correct.

21 Q All right.

22 MR. JONES: Objection, Your Honor. I don't
23 think this is a proper use of a deposition.

24 THE COURT: Sustained.

25 BY MR. PARDON:

ROBERT CONROY - CROSS

1 Q Had a decision been made to move Mr. Kingsley to
2 receiving for a 23-hour lockdown because Deputy Manka
3 had issued a minor violation report?

4 A No.

5 MR. PARDON: Your Honor, may I proceed to read
6 a portion of the deposition at this time?

7 THE COURT: Is this in an attempt to impeach
8 Mr. Conroy?

9 MR. PARDON: Yes.

10 THE COURT: You may.

11 BY MR. PARDON:

12 Q All right. So turning to line 12 of page 36, the
13 question was asked to you:

14 "Question: So the reason to take him to receiving
15 it sounds like was two-fold: Number one was so he would
16 not be in the cells so you could remove the paper; and
17 number two, discipline for violating jail rules. Is
18 that correct?

19 "Answer: At that time, yes. His placement in
20 receiving would be the 24-hour lockdown, I believe it
21 was, that Deputy Manka had issued. So that would have
22 been, during that conversation, that would have been the
23 reasoning, yes."

24 Is that what you testified under oath then?

25 A That is what I testified. But there is -- if I may
ROBERT CONROY - CROSS

1 clarify.

2 THE COURT: Your lawyer will have -- not your
3 lawyer, but the defendants' lawyer will have an
4 opportunity to ask you some more questions.

5 BY MR. PARDON:

6 Q All right. You mentioned at one point while
7 Mr. Kingsley was in the receiving cell that you
8 considered the use of the chair; correct?

9 A Correct.

10 Q And at the time you considered the use of the
11 chair, he was in handcuffs; correct?

12 A Correct.

13 Q All right. In fact, you also made an observation
14 about the position of Mr. Kingsley's handcuffs before he
15 was carried into the cell, and you testified they were a
16 little loose; correct?

17 A Correct.

18 Q You didn't say anything in any incident report you
19 wrote about his handcuffs being a little loose; did you?

20 A No.

21 Q And in preparation for your testimony in this case,
22 you, in fact, read an expert disclosure by a Mr. Landers
23 on behalf of the plaintiff; didn't you?

24 A I read one expert testimony, the one that you
25 provided. That's the one I read.

ROBERT CONROY - CROSS

1 Q Okay. And that had something to do with, in part
2 at least, about the potential tightness of the
3 handcuffs; didn't it?

4 A I believe it did.

5 Q Okay. You also had a conversation, I just want to
6 be clear, with Sergeant Hendrickson right after you
7 exited the receiving cell in which you asked him why the
8 taser was used; correct?

9 A Yes.

10 Q All right. Did the tone of that question go
11 something like what were you doing? Why did you use the
12 taser?

13 A No. It was the tone that I'm using right now.

14 Q Okay. And you also said that you thought you heard
15 Sergeant Hendrickson state that Mr. Kingsley had tried
16 to bite him in the past; right?

17 A In a certain cell entry?

18 Q Right, yes. Right after that you --

19 A Yeah. I put that in my report, yes.

20 Q Okay. And just to be clear, a month later you
21 wrote, in response to Mr. Kingsley's request to have
22 that changed, that your report of what you heard was an
23 accurate account of what was said. Isn't that what you
24 said; correct?

25 A Paraphrased, but yes.

ROBERT CONROY - CROSS

1 Q Okay. And in preparing for your testimony in this
2 case, you, in fact, had a conversation with Sergeant
3 Hendrickson, didn't you, in which Sergeant Hendrickson
4 told you that he had testified otherwise; that he never
5 made that comment. Isn't that correct?

6 A I asked him and he stated he did not make that
7 comment, yes.

8 Q So you were aware that Sergeant Hendrickson had
9 provided that testimony in a deposition when you
10 testified in this case?

11 A Yes.

12 Q And I think you also testified that you save, in
13 the Monroe County Jail, you save videos of -- do you
14 save videos of any significant event that occurs?

15 A Yes.

16 Q To your knowledge, is there any video of you
17 removing the handcuffs from Mr. Kingsley when he went
18 back in 15 or 20 minutes later or whatever it was?

19 A I believe there is.

20 Q We haven't seen it here today, have we?

21 A Not today, no.

22 MR. PARDON: No further questions.

23 THE COURT: Mr. Jones.

24 MR. JONES: Just a few.

25 REDIRECT EXAMINATION
ROBERT CONROY - CROSS

1 BY MR. JONES:

2 Q You ruled out at some point using the chair, quote
3 unquote, *the chair*, with Mr. Kingsley; correct?

4 A Correct.

5 Q Why did you rule out using the chair?

6 A Because we couldn't get him under control to put
7 him into the chair; couldn't get his handcuffs off. It
8 just wasn't a viable option.

9 Q What is the fact of the matter as to whether or not
10 you had decided that Mr. Kingsley would be moved to
11 receiving when you went back to talk to him originally
12 the morning of May 21st?

13 A When I went back to speak to Mr. Kingsley
14 originally, it was to get him to take the light down.
15 He could have served that 23-hour lockdown in his cell
16 had he done that. As we progressed through this, then
17 there were other considerations that came to mind when
18 we had to move him out. So not only would he have to be
19 removed from his cell and placed in receiving to face
20 that 23-hour lockdown that Deputy Manka served, but also
21 discipline for failure to follow other orders and having
22 to remove him from the cell, there was additional
23 discipline. That's why we removed or we took him out,
24 removed him from the cell and put him in the receiving
25 area.

ROBERT CONROY - REDIRECT

1 Q So when you went back to talk to Mr. Kingsley, was
2 he already on a disciplinary lockdown?

3 A Yes.

4 Q And clarify for us why was that?

5 A For failure to follow orders of staff. He didn't
6 take the paper down when he was told to do so multiple
7 times by staff.

8 Q By whom originally -- well, let me back up. Who
9 put him on that and when?

10 A Deputy Manka the previous night.

11 Q Okay. And is that why, when we looked at the video
12 of the cell doors closing on south block as you entered
13 into the cellblock, is that why all the doors closed
14 except Mr. Kingsley's?

15 A Correct, because he was already serving that
16 discipline.

17 Q And then was there further discipline to be issued
18 as a result of his failure to follow your orders?

19 A Correct. A minor discipline is something that is
20 23 hours or less. A major discipline is more than 24
21 hours. At that point, we generally take them out of the
22 place where they're housed in and at that point we'll
23 put them in receiving. And then he could serve that
24 time consecutive to the original discipline for failure
25 to follow Deputy Manka's orders.

ROBERT CONROY - REDIRECT

1 Q Was there any discipline to be imposed other than
2 these lockdowns and the segregation in the receiving
3 cell? Or was that it?

4 A No other discipline, just a lockdown.

5 MR. JONES: Thank you.

6 THE COURT: You may step down.

7 (Witness excused at 2:21 p.m.)

8 THE COURT: Mr. Pardon, you may call your next
9 witness.

10 MR. PARDON: All right. Your Honor --

11 MR. JONES: I'm sorry, I didn't mean to
12 interrupt, but this witness was under subpoena. Is he
13 released from that subpoena?

14 MR. PARDON: Yes.

15 THE COURT: You're free to leave the building.

16 MR. PARDON: Your Honor, we call Mr. Brian
17 Landers.

18 **BRIAN LANDERS, PLAINTIFF'S WITNESS, SWORN,**

19 DIRECT EXAMINATION

20 BY MR. PARDON:

21 Q Good afternoon.

22 A Good afternoon.

23 Q Could you state your name.

24 A Brian Landers.

25 Q Mr. Landers, what is your present employment
BRIAN LANDERS - DIRECT

1 position?

2 A I am the criminal justice chair for Madison
3 College.

4 Q And Madison College, just for the benefit of our
5 jury, has that been referred to as any other names?

6 A Yes. Madison Area Technical College.

7 Q MATC?

8 A MATC, correct.

9 Q Do you have any other positions that you presently
10 hold?

11 A I co-own a company called *BlueboardIT*, and I'm also
12 an elected official. I'm the mayor of the City of
13 Wisconsin Dells.

14 Q Could you briefly describe your educational
15 background.

16 A I have a social degree studies from MATC. I also
17 have a bachelor of science in criminal justice and
18 prelaw from Mt. Senario College. And I also attended
19 the 500 -- or the 400-hour at that time Basic Law
20 Enforcement Recruit Academy at MATC.

21 Q All right. And do you have any direct experience
22 in law enforcement?

23 A Yes. I served 18 years with the Wisconsin Dells
24 Police Department.

25 Q And when was that?

BRIAN LANDERS - DIRECT

1 A From 1992 to the end of 2010.

2 Q Okay. And what in general were your duties as a
3 police officer?

4 A General patrol duties. Investigative duties. As I
5 advanced through the Department, I became a canine
6 handler for about eight-and-a-half years. I was on the
7 drug unit. I was assigned to the county drug units as
8 well in Sauk and Columbia County. I was in charge of
9 Department training.

10 I was promoted to Lieutenant in 2003 through 2008.
11 In 2008 I was promoted to Lieutenant. Part of my duties
12 as a sergeant were supervision of patrol staff,
13 supervision of nonpatrol staff, as well our dispatch.
14 Part of my duties as Lieutenant was to do policy
15 guidance, assessment budgeting.

16 We also had a municipal lockup, so duties included
17 administration of the municipal lockup as well.

18 Q Just to clarify I think you said you became a
19 Lieutenant in 2003.

20 A I'm sorry. Sergeant. I was promoted to Sergeant
21 from 2003 to 2005 or 2003 to 2008 and then 2008 I was
22 promoted to Lieutenant.

23 Q Okay. And did part of your training as a police
24 officer involve the appropriate use of force?

25 A Yes, it did.

BRIAN LANDERS - DIRECT

1 Q Did you ever have occasion to use force or consider
2 the use of force while you were a police officer?

3 A Many times.

4 Q Did you ever have occasion to use a taser on anyone
5 while you were a police officer?

6 A Yes, I did.

7 Q And have you ever yourself been tased?

8 A Yes, I have.

9 Q What does it feel like?

10 A It hurts.

11 Q And as part of your duties in the Wisconsin Dells
12 Police Department, did you have occasion to have access
13 to a jail?

14 A Yes. The City of Wisconsin Dells actually sits on
15 four different counties: Sauk, Columbia, Juneau and
16 Adams. So we had to be familiar with the jail
17 procedures in all four of those jails. That included
18 taking people to the jail; sometimes we'd have to pick
19 them up to transport them to other places; sometimes
20 we'd have to interview people at the jail. So we had to
21 be familiar with those jails, as well as our municipal
22 lockup as well.

23 Q Okay. Now, you mentioned that you're on the
24 faculty of Madison College or MATC, formerly known as
25 MATC. How long have you been on the faculty?

BRIAN LANDERS - DIRECT

1 A I was part-time since 2000 and then I was hired
2 full time in December of -- actually technically
3 September of 2010.

4 Q Okay. And what are your present duties at Madison
5 College?

6 A As criminal justice chair, the bulk of my duties
7 include the administration of The Law Enforcement
8 Academy, The Jail Academy and the specialized training.
9 Specialized training is when a police officer gets done
10 with their basic training, then they go through
11 specialized training to keep up their certifications or
12 to get an advance knowledge or training in a specific
13 skill.

14 Part -- I also teach within the Law Enforcement
15 Academy, and part of my duties when initially hired and
16 still carry with me today is I'm kind of the course
17 coordinator and lead professor of a course called
18 *Introductions to Corrections* which is a course that's
19 trained in the associate degree portion of the Madison
20 Area Technical College.

21 Q Have you ever heard of something called -- that's
22 colloquially called the *DAAT Manual*?

23 A Yes.

24 Q What does DAAT stand for?

25 A DAAT is an acronym. D-A-A-T. It stands for
BRIAN LANDERS - DIRECT

1 *Defensive And Arrest Tactics.*

2 Q Do you do any instruction with respect to the DAAT
3 Manual?

4 A Yes. I've been a DAAT instructor since 2000. I've
5 been the lead instructor for MATC in their DAAT program
6 since 2003, and was also appointed as a master
7 instructor of defensive tactics.

8 Q Okay. Just to back up a bit, what professions are
9 you preparing the students that you're teaching at
10 Madison College?

11 A Wide variety. Our students go on to become police
12 officers, sheriff's deputies, jailers, correctional
13 employees at both the state and federal level, federal
14 law enforcement, probation, courts, sometimes private
15 security.

16 Q Okay. And how many officers have you personally
17 trained?

18 A Well over a thousand.

19 Q Just to help us if there's any -- to be clear, are
20 there any differences between corrections officers,
21 jailers, and police officers?

22 A Yeah. Police officers are officers that work on
23 patrol. They work the street. Jailers are people that
24 work through -- usually through a county sheriff's
25 Office that are assigned to work in a jail setting.

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1 Correctional officers are -- usually that term is
2 referred to people that work in the profession of
3 corrections at the state or federal level working in
4 prisons.

5 Q All right. And would a police officer or a
6 sheriff's deputy be qualified to work in a jail, in a
7 county jail?

8 A They would be qualified. The qualifications are
9 higher for law enforcement than they are for jailers
10 per se; not to say the professionalism should not be
11 equal, but they would be qualified. But if they were
12 going to work as a jailer full time, then they would
13 have to attend and complete the Jail Academy.

14 Q All right. You talked earlier about the Defensive
15 And Arrest Tactics Manual. Could you describe a little
16 bit more about what that is?

17 A The Defensive And Arrest Tactics Manual is kind of
18 the guide or the Bible for use of force in Wisconsin.
19 Every single police officer in the State of Wisconsin,
20 when they go through the academy, has to be trained in
21 defense and arrest tactics. The manual is just that.
22 It's the training manual for every single law
23 enforcement officer in Wisconsin.

24 Q All right. And have you personally played any role
25 in developing the content of the DAAT Manual?

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1 A Yes, I have.

2 Q And how so?

3 A I've been appointed by the -- I was a State of
4 Wisconsin, Department of Justice, Division and Training
5 in Standards as a member of the Tactical Advisory
6 Committee. The Tactical Advisory Committee is the
7 committee that shaped law enforcement training,
8 including the authoring, distribution, and regulations
9 of training anything related to defensive and arrest
10 tactics as a statewide curriculum.

11 Q And as part of your role on the Wisconsin DOJ
12 Tactical Advisory Committee, have you assisted in
13 preparation of other manuals that are used?

14 A Yes. Under our guidance, not only is DAAT's
15 curriculum part of our program, but the state firearms
16 curriculum; the tactical response curriculum, which
17 would be something like a active shooter or the school
18 shooting; and also the electronic control device
19 training and curriculum.

20 Q And electronic control device, does that include a
21 TASER?

22 A Yeah. It's the state's name for a TASER.

23 Q Okay. Are there differences in the way that law
24 enforcement officers or police officers are trained in
25 use-of-force principles as opposed to the way jail

BRIAN LANDERS - DIRECT

1 officers are trained?

2 A No. There's different topics: Defensive and
3 arrest tactics is meant more for law enforcement
4 training. Jailers have to go through what we call POSC,
5 which is P-O-S-C. It's an acronym for Principles of
6 Subject Control.

7 Out of the physical requirements, when somebody
8 goes through an academy, they're required to have a
9 physical testing, besides a written exam, but to make
10 sure that all the competencies, that they know have to
11 do the different skills required. Out of the 50
12 requirements in POSC, and I believe there's 49 in DAATs,
13 they're almost 99% identical. But the major difference
14 between POSC in jail and DAAT in law enforcement is a
15 lot of the -- some of the tactics like group handcuffing
16 or escorting a person from point A to point B. There's
17 more emphasis on doing it as a team or as a group in a
18 jail than there is in DAAT.

19 The theory is is that a lot of police officers,
20 especially in Wisconsin, work in rural or isolated
21 areas, so there's more of an emphasis on how to take
22 care of yourself when you're on your own.

23 Q Okay. And you sort of said this, but what's the
24 relationship between POSC and DAAT Manuals?

25 A The relationship is that there's a separate
BRIAN LANDERS - DIRECT

1 committee, the POSC Committee that the state appoints.
2 Back a couple years ago, I want to say somewhere around
3 2010, they decided to shape their manual in line with
4 the DAAT Manual so that there's almost seamless training
5 between the two.

6 Q Okay. I'm going to refer you to Plaintiff's
7 Exhibit 1067, if you could find that in your binder,
8 please. Sorry about the bulkiness.

9 A That's okay. I believe I have it.

10 Q Okay. Could you describe what Plaintiff's Exhibit
11 106 is.

12 A It would be my curriculum vitae or my resume.

13 Q And does this accurately reflect your employment
14 and educational experience?

15 A Yes, it does.

16 MR. PARDON: Your Honor, I move to admit
17 Plaintiff's Exhibit 106.

18 MR. JONES: No objection.

19 THE COURT: Received.

20 MR. PARDON: May I publish it then for the
21 jury?

22 THE COURT: Any objection?

23 MR. JONES: No.

24 THE COURT: You may.

25 BY MR. PARDON:

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1 Q All right. I'm going to direct your attention to
2 the second page of your resume. Now again, I have put
3 yellow markings on the copy here that I'm showing the
4 jury and you. I'd like to highlight a couple of things
5 and I'm going to refer to the section on instructor
6 certifications. Can you describe what are instructor
7 certifications?

8 A These are specific certifications that are provided
9 either through the State of Wisconsin Department of
10 Justice; sometimes there are private entities that will
11 also certify you in certain areas.

12 Q Okay. And I'd like to call your attention to the
13 second highlighted portion I have there. What's a
14 master instructor of defensive tactics?

15 A That is somebody that has to be appointed through a
16 technical college or training academy. Actually they're
17 referred to by a technical college or a training academy
18 to the Department of Justice of somebody who has
19 advanced knowledge or training in the use of defensive
20 tactics and the training of defensive tactics to become
21 a trainer.

22 The Department of Justice Training and Standards
23 then reviews that and if they feel the person is
24 qualified, they will appoint them as a master
25 instructor.

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1 Q And you have that certification?

2 A Yes.

3 Q Okay. And the second highlighted thing I have a
4 few lines down says *report writing instructor*. Do you
5 see that?

6 A Yes, I do.

7 Q What certification is that? What's that about?

8 A That's another -- you have to submit kind of an
9 application resume to the Department of Justice, again
10 outlining your training and experience and education,
11 and the training and standards board meets and if they
12 feel that you're qualified to teach this, then you are
13 certified as a report writing instructor.

14 Q And I'm going to refer you to the final
15 certification I have highlighted. Do you see the one
16 that says *TASER instructor*?

17 A Yes.

18 Q And previously what's that?

19 A That would be a private vendor outside the State of
20 Wisconsin, Taser International, that if you go through
21 their training course, then you are certified as a TASER
22 instructor if you go through the instructor level
23 course.

24 Q You can set the resume aside here for now. Have
25 you evaluated use-of-force issues before?

BRIAN LANDERS - DIRECT

1 A Yes, I have.

2 Q All right. Have you ever testified in a case like
3 this before?

4 A No, I have not.

5 Q Okay. What were you asked to do in connection with
6 this case, Mr. Landers?

7 A Give me one second.

8 Q Okay. I apologize.

9 A That's okay. Excuse me. I was asked to do -- to
10 review this incident and establish an opinion, and I've
11 established an opinion based upon the three incidents.
12 The first incident that I've established an opinion on
13 was that the use of the taser was unreasonable.

14 The second --

15 MR. JONES: Objection, Your Honor.

16 THE COURT: I'm sorry. Did you object?

17 MR. JONES: I did object. May I approach?

18 THE COURT: You may.

19 (Discussion at side bar at 2:35 p.m.)

20 MR. JONES: This has been covered in part in
21 the motions in limine, but I wanted to renew my
22 objection to the witness testifying about what is
23 reasonable and unreasonable.

24 THE COURT: What is --

25 MR. JONES: What is reasonable force or what is
BRIAN LANDERS - DIRECT

1 unreasonable force. We think that's essentially a legal
2 conclusion and that he should not be permitted to
3 testify to it. I do have citations if that would assist
4 the Court.

5 MR. PARDON: I think the answer to your motion
6 in limine, to the motion in limine was an accurate
7 description of the law. I think he can testify. He's
8 talking about what the standards are, how officers are
9 expected to act, and he's going to testify whether
10 that's reasonable.

11 THE COURT: Right. We'll stick with that, with
12 the ruling. Okay.

13 (End of side bar discussion at 2:35 p.m.)

14 BY MR. PARDON:

15 Q Getting back to where we were, let me reask the
16 question. What were you asked to do in connection with
17 this case?

18 A I was asked to review the case and establish an
19 opinion based upon my review, and my opinion was that --
20 my first opinion was that the use of the taser was
21 unreasonable.

22 My second opinion that I've established is that the
23 handcuffing that was done on Mr. Kingsley was not done
24 appropriately and could have led to the handcuffs not
25 being applied appropriately to tension in the arms of

BRIAN LANDERS - DIRECT

1 Mr. Kingsley.

2 The last opinion that I've established was that the
3 control tactics done by Sergeant Hendrickson in the
4 receiving cell of Mr. Kingsley were also unreasonable.

5 Q Okay. I'm going to ask you more detail about those
6 opinions in a bit. But I would just like to back up a
7 little bit and say what things did you do personally to
8 come to those conclusions?

9 A I reviewed the incident reports that were supplied
10 to me. I reviewed the videos that were supplied to me.
11 I also reviewed the policies by Monroe County. I've
12 reviewed the deposition of Mr. Kingsley. I've also used
13 the -- used the State training manuals that were present
14 at the time of the incident. And I used my own training
15 and experience to establish my opinion.

16 Q Okay. Did you review the training records of the
17 officers in this case as well?

18 A Yes, I did.

19 Q All right. All right. I'd like to turn now to
20 your opinion on the use of the taser, and if you could
21 summarize why do you believe that the use of the taser
22 on Mr. Kingsley under this circumstance was
23 unreasonable?

24 A The use of a taser is -- a taser is a weapon. The
25 use of a taser in our state and also throughout many

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1 other states requires that there has to be a component
2 of active resistance, and active resistance has a very
3 clear definition. That definition is that active
4 resistance is a person physically counteracting the
5 control tactics of an officer with a component that
6 presents a real threat of bodily harm to that officer.
7 I did not see that there was active resistance.

8 Q I'm going to again ask you -- we're going to get to
9 that in more detail, but we've been using a lot of these
10 terms and I just want to make sure that folks
11 understand.

12 First of all, can you just briefly explain what a
13 taser is?

14 A A taser is an electronic control device or it's a
15 handheld device. It looks very similar to a gun, but
16 it's not a gun. It contains an electronic charge that's
17 powered by what they call a *digital powered magazine*,
18 which is kind of a fancy term for a battery pack.

19 That battery pack, when the taser is turned on and
20 the trigger is depressed, will send an electronic
21 current through a positive and negative probe. The
22 current tasers that are used today have cartridges that
23 affix onto the end of the device, and inside those
24 cartridges are two probes connected through a copper
25 wire that go back to compressed nitrogen. So when the

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1 trigger is pulled, if the cartridge is in place, it will
2 fire those probes out of the cartridge to the target.
3 Lacking the cartridge, the taser can still be used as
4 kind of a stun gun, if you will.

5 At the very end of it, there's a positive and
6 negative probe. When you touch it to the skin of a
7 person, then they feel the electricity.

8 Q Okay. So what's the difference between what
9 happens to a person who's hit by a taser when they've
10 been struck by the probes versus what happens when
11 they've been stunned?

12 A When they're hit with the probes, the probes
13 actually have to go in or make contact with the skin and
14 what that does is it starts to interfere with the nerve
15 signals between the brain and the major muscle groups.
16 Everybody understand that your brain, when you talk,
17 move, blink and all that, all of that is being
18 controlled through electricity conducted from the brain
19 to nerve endings.

20 What the taser has done is they have pretty much
21 isolated the wavy wave of the brain impulses with the
22 nerves, and it interrupts that. It jams them, if you
23 will. So when the probes actually make contact and go
24 into the body, even though they go in for a very short
25 amount, it interrupts the ability for the brain to speak

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1 with major muscle groups, so the major muscle groups
2 tend to lock up.

3 Lacking the probes actually going into the body,
4 that doesn't cause that muscular disruption. So if you
5 were to just take a taser, take the cartridge off, press
6 it to somebody's skin, you're not getting that muscle
7 disruption I talked about, but you are getting pain from
8 the electricity.

9 Q Do you know how the taser was deployed in this
10 case?

11 A Yeah, it would have been without the cartridge,
12 which is commonly referred to as a drive stun.

13 Q And that's the mode that causes pain; correct?

14 A Correct.

15 Q Now you also say that Mr. Kingsley did not show
16 active resistance; correct?

17 A Correct.

18 Q Is that a term that has a specific meaning?

19 A Yes, it does.

20 Q All right. I want to ask you if you could turn to
21 Plaintiff's Exhibit 9 in your binder. So that should be
22 in your first binder.

23 A Okay.

24 Q Can you identify what Plaintiff's Exhibit 9 is?

25 A This is the Defensive and Arrest Tactics Manual
BRIAN LANDERS - DIRECT

1 from August 2007.

2 Q Is that the basic manual that was in effect at the
3 time of the incident here?

4 A Yes, it is.

5 Q And did you use this in considering your opinion in
6 this case?

7 A Yes, I did.

8 Q All right.

9 MR. PARDON: Your Honor, I move to admit
10 Plaintiff's Exhibit 9.

11 MR. JONES: No objection.

12 THE COURT: It's received.

13 MR. PARDON: If I could then publish it to the
14 jury.

15 BY MR. PARDON:

16 Q I'm going to refer to specific pages, so I'm going
17 to refer you to page -- the third page of the Manual.
18 I'll put that up here. And are you there yet? It's
19 like little roman numeral iii?

20 A Yes.

21 Q The third page of the Manual, can you -- I've
22 highlighted something on the screen here that I'm
23 showing both yourself and the jury. And is that you?

24 A Yes, that is.

25 Q And why are you listed here?

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1 A Because I was a member of the Tactical Advisory
2 Committee that authored this Manual.

3 Q Okay. You indicated the term *active resistance* has
4 a specific meaning. Could describe some terms that
5 refer to resistance and what they mean?

6 A Some terms?

7 Q Well, could you describe what is active resistance?

8 A Active resistance is resistance, physical
9 resistance that physically counteracts an officer's
10 ability to take a person into custody or control a
11 person that also presents an element of bodily harm to
12 that officer.

13 Q Okay. Could you turn to page 105 of the Manual.

14 A Okay.

15 Q Do you see that I highlighted the term *active*
16 *resistance* in this section of the Manual?

17 A Yes, I see that.

18 Q And is this what you were referring to when you
19 talk about active resistance?

20 A Yes, it is.

21 Q Have you heard the term *passive resistance*?

22 A Yes, I have.

23 Q What does passive resistance mean?

24 A It means it's noncompliant but yet nonthreatening
25 behavior.

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1 Q And again, could you turn to page 118 of the
2 Manual.

3 A I'm there.

4 Q Okay. And do you see the term *passive resistance*
5 highlighted there?

6 A Yes, I do.

7 Q And is that what you're talking about?

8 A Yes, it is.

9 Q Could you turn to page 35 of that Manual, please.
10 I'm going to put up a portion of that page that refers
11 to control alternatives. It's about halfway down and
12 I've highlighted specifically two different paragraphs.
13 One that begins with *passive resistance* and one that
14 begins with *active resistance*. Do you see that?

15 A Yes, I do.

16 Q Can you describe or explain what is being
17 highlighted here?

18 A What's being highlighted is to try to give the
19 student an understanding of the difference between
20 passive and active resistance. People are different
21 types of learners, so sometimes they can learn better by
22 visualizing. So what we've done is we try to give some
23 examples in which a student can maybe get a light bulb
24 turned on to say okay, I understand what they mean here
25 between passive and active resistance.

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1 Q Now, referring to this here, as well as your own
2 experience, can you provide some examples of what would
3 cause -- of things that are commonly taught to
4 constitute passive resistance as well as active
5 resistance?

6 A Sure. A passive resistance would be something like
7 let's say somebody is outside protesting the federal
8 court; them sitting on the stairs with their arms
9 crossed saying I'm not going to leave, but yet they're
10 not showing any signs or indication that they're going
11 to intentionally harm that officer.

12 Another example that was in the news recently was
13 the example of the pepper spraying of the UC Santa
14 Barbara students during the sit-in for the 99% protest,
15 I believe, or the occupied protest. So that would be an
16 example of passive resistance.

17 Active resistance would be something that, again,
18 physically counteracts an officer's ability to take
19 them, to control or take the person into custody and
20 presents a level of bodily harm. An officer tells
21 somebody you're under arrest and they turn around in a
22 boxing stance or a fighting stance. Maybe an officer is
23 trying to take a person into custody and the person gets
24 up and violently pulls their arms away or they are
25 directed to the ground and they get up back up again and
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1 they're showing a repetitive action to fight the
2 officer.

3 Q Okay. Thank you. I'd like to ask you about
4 another term. Have you heard the term *resistive*
5 *tension*?

6 A Yes, I have.

7 Q And what is resistive tension?

8 A It's the level of agitation in a person's body.

9 Q And what is the relationship between terms like
10 passive or active resistance and the term resistive
11 tension?

12 A Resistive tension is used to be an indicator for
13 officers, not only for the potential for a situation to
14 escalate, but they'll also consider the entire
15 circumstances, the entire environment. If an officer
16 goes hands on and touches a person, they might feel
17 resistance; tension. An officer has to understand what
18 is that tension caused from. For instance, a person
19 standing outside on the street watching their home burn
20 down, the officer has to move that person away so the
21 firefighters can get in there. An officer might feel
22 resistive tension. Doesn't necessarily mean that that
23 person is going to harm the officer.

24 Q You may have answered my question, but the question
25 is does -- one of the questions I have is does -- if
BRIAN LANDERS - DIRECT

1 somebody is exhibiting resistive tension, does that
2 necessarily mean they are exhibiting active resistance?

3 A No. It's a case-by-case basis.

4 Q All right. We'll get into this further, but based
5 on your review of the incident, how would you
6 characterize Mr. Kingsley's actions at the time he was
7 tased by Officer Degner in terms of resistance he may
8 have been offering?

9 A I would say either no resistance or passive.

10 Q Was he exhibiting active resistance?

11 A No.

12 Q All right. Now you've talked about the fact that
13 tasers are not supposed to be used unless there's active
14 resistance. Are there guidelines for the type of force
15 that officers can use in Wisconsin?

16 A Yes.

17 Q Okay. And could you turn to page 29 of the DAAT
18 Manual. Exhibit 9. I'll put it up here, a portion of
19 page 29 up here. Let me know when you're there.

20 A I am here.

21 Q Could you explain generally what's being depicted
22 on this chart of page 29 of the DAAT Manual.

23 A This is the intervention options. The intervention
24 options are basically where the tactics of a police
25 officer or a jailer would -- where it would fall in

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1 line. What we call a *Disturbance Resolution Model*. A
2 Disturbance Resolution Model is a blanket model for all
3 police officers and jailers to understand when use of
4 force is appropriate.

5 Q Okay. Could you briefly describe some of the modes
6 that are described here and what their purpose is.

7 A Sure. The first mode is *presence*, which is
8 displaying authority. It's a, you know, police officer
9 or jailer shows up. You know, just their presence alone
10 can get people to comply or maybe deter people from
11 doing something they shouldn't be doing.

12 Dialogue is to verbally persuade, which presence
13 and dialogue combined, having an officer talking to a
14 person or possibly using heavy commands upon a person,
15 trying to get them to comply.

16 Then there's control alternatives. Control
17 alternatives are used when there's passive or active
18 resistance or threats.

19 And the next would be protective alternatives,
20 which is going to be used when you have continued
21 ongoing resistance or there's definitely assaultive
22 behavior. An officer is being injured right now.

23 And then lastly is deadly force, which is to stop
24 the threat.

25 Q Okay. Could you turn to page 32 of the Manual, and
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1 specifically I'm referring you to the section that says
2 *Dialogue*. Do you see that section?

3 A Yes, I do.

4 Q And do you see that it continues on to page 33 of
5 the Manual?

6 A Yes.

7 Q All right. And I'm going to refer you to part of
8 page 33, the portion I have highlighted here on the
9 screen.

10 What is being described here in the highlighted
11 portion of the Manual?

12 A In each mode, you know, with maybe the exception of
13 presence and deadly force, there are varying levels of
14 tactics that officers can use, from a lower level to a
15 higher level, and that's what this is describing; that
16 an officer's verbalization skills alone can get people
17 to comply or provide them information. So this is kind
18 of describing a low level to a higher level of
19 verbalization.

20 Q I'd like to refer to a higher level where you talk
21 -- where you mentioned about control alternatives. Can
22 you talk about what some of the control alternatives
23 are.

24 A Again, there's lower levels and there's higher
25 levels. Some of the lower levels would be pressure

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1 points. There's a mandibular pressure point behind a
2 person's ear that could be used. Some of the higher
3 levels would be decentralizations of taking a person
4 that's standing up and forcing them or directing them to
5 the ground. And then there's also the use of a taser or
6 pepper spray in the controlled alternatives portion of
7 our Manual.

8 Q I'm going to refer you to page 41 of the Manual.

9 A Okay.

10 Q When you get there, and in particular to the
11 portion I've highlighted, what is being described here
12 in the highlighted portion?

13 A When we talk about control alternatives and control
14 devices, control devices in the State of Wisconsin are
15 pepper spray and tasers or ECDs. What this basically
16 says is you are permitted to use these as a police
17 officer only when you encounter active resistance or the
18 threat of active resistance. Nothing less.

19 Q Okay. And just again, briefly how does this relate
20 to Mr. Kingsley's case?

21 A There was no active resistance when the taser was
22 used.

23 Q Okay. Why do you think there was no active
24 resistance when the taser was used?

25 A Well, I did not see anything in the video and there
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1 was nothing in the reports that articulated that there
2 was active resistance.

3 Q Okay. I'd like to walk you through a couple of the
4 videos, but in light of the fact -- I'll ask you briefly
5 did you view the video in which Mr. Kingsley was carried
6 out of his cell and down the hallway?

7 A Yes.

8 Q And in fact, did you see that video today in the
9 courtroom?

10 A Yes, I did.

11 Q And is there anything on that video that indicated
12 to you that Mr. Kingsley was exhibiting active
13 resistance?

14 A No.

15 Q All right. I'm going to refer you to Plaintiff's
16 Exhibit 14, and this is the video of the receiving cell,
17 which I understand is the subject of a stipulation for
18 admissibility.

19 MR. JONES: Yes.

20 MR. PARDON: Could you turn on the laptop?

21 Q Did you rely on this video in part in forming your
22 opinions in this case?

23 A Yes, I did.

24 Q And by the way, can you tell us what the
25 blacked-out area in the video is?

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1 A That's usually set there by the monitoring company
2 in cooperation with the jail staff. Behind that is the
3 toilet, so it gives the inmate some privacy when they're
4 using the toilet.

5 Q Okay. I'm going to play this video for the jury to
6 watch. It's going to take a couple of minutes, but I
7 would like everyone to see it, as well as yourself.

8 (Video played 2:56-2:59 p.m.)

9 Q I'm going to stop it there. Just so we're clear,
10 are you able to identify the point on the video when the
11 taser began to be deployed?

12 A It appears to me that the taser was employed right
13 around 6:46:46, I believe somewhere around that, 6:45,
14 6:46.

15 Q Okay. What I'll do is I'll play a short segment of
16 it, and just so we're all clear, if you could point out
17 where that begins if you're able to see it. Okay?

18 A Okay.

19 (Video played)

20 A Right about there.

21 Q So when you said *right about there* --

22 A 6:45:46.

23 Q Okay. Thank you. I'd like to discuss your
24 professional observations of the video. What aspects of
25 this video led you to the conclusion that Mr. Kingsley

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1 was not exhibiting active resistance?

2 A I don't see a physical threat to the officers
3 there. I see a man that is handcuffed behind his back
4 laying face down in a bunk with weight or pressure from
5 the officers, and there's no physical harm presented to
6 the officers.

7 Q All right. I'm going to move to a segment of the
8 film where I asked you about some movements that
9 Mr. Kingsley made with his upper body. So if you would
10 bear with me while I fuddle with the computer here and
11 get to the point that I want to start, I appreciate
12 that.

13 Okay. I'm going to begin it at 6:44:34 and I'm
14 going to play it for a little bit. So beginning at
15 6:44:34.

16 (Video played)

17 All right. Now I've stopped the video at 6:44:52,
18 and I'd like to ask you did you see Mr. Kingsley's head
19 or upper body make any movements there?

20 A Yeah. Lifting off of the bunk.

21 Q Okay. And first of all, based on your reports or
22 review of your reports from this case, do you know which
23 person is at Mr. Kingsley's head?

24 A I believe that would be Sergeant Hendrickson.

25 Q Are you aware there was some mention in the
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1 incident reports in this case about a concern that
2 Mr. Kingsley might try to bite someone?

3 A Yes.

4 Q All right. Does it appear to you from your
5 professional review of the video that the actions of
6 Sergeant Hendrickson around the time that Mr. Kingsley
7 was moving his head are consistent with someone who is
8 concerned about being bitten?

9 A No.

10 MR. JONES: Objection. Competence.
11 Foundation.

12 THE COURT: Overruled.

13 BY MR. PARDON?

14 Q Why?

15 A Anyone concerned about being bitten is going to pay
16 attention to the person. You're not going to stand away
17 from them. You're going to try to control their head.
18 You're going to be directing your attention at them.
19 There were several times just prior to that taser being
20 used that Sergeant Hendrickson isn't doing any of those
21 things. He's letting Mr. Kingsley move his head a
22 little bit. He takes control of the head and he lets it
23 go. He takes control and lets it go. If you're worried
24 about being bitten, you don't do that.

25 Q Okay. Do you think that Mr. Kingsley, lifting his
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1 head in these instances here, constitutes aggression or
2 active resistance?

3 A No.

4 Q Why?

5 A There's no -- again, there's no threat of
6 intentional bodily harm from a person just lifting their
7 head off a bunk.

8 Q All right. Let me ask you about some of the noise
9 you heard on the video. Did you hear Mr. Kingsley
10 grunting and groaning?

11 A Sure.

12 Q Did you hear him at one point swearing at the
13 officers?

14 A Yes, I did.

15 Q All right. Does Mr. Kingsley's yelling or grunting
16 or groaning or swearing constitute a threat that would
17 make you say he's exhibiting active resistance that
18 would justify the use of a taser?

19 A That in and of itself, no.

20 Q Why not?

21 A Well, because other parts of our manual are just
22 applications of what you learn in your experience is
23 that people are going to say things and people are going
24 to express their frustrations in a different way doesn't
25 necessarily mean that they're a live threat to my bodily

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1 harm. The old adage sticks and stones may break my
2 bones, but names don't hurt me. You've got to have
3 thick skin as a police officer.

4 Q Are officers, in fact, taught appropriate verbal
5 skills?

6 A Yes, they are.

7 Q In your opinion, were appropriate verbal skills
8 used here?

9 A No.

10 Q And why is that?

11 A Well, when you're dealing with somebody who is
12 agitated to this level and you have the ability to
13 control them by outnumbering them in a semi-secure place
14 of a county jail, talking to them and being more
15 reasonable, when someone is shouting and another person
16 is shouting, it just kind of escalates the tension in
17 the environment.

18 I mean using a calmer approach -- and that's why in
19 our Disturbance Resolution Manual we talk about that and
20 the verbalization manual, we talk about using lesser
21 means of verbalizing to try to de-escalate or calm a
22 person.

23 Q All right. Do you know what the deputies have said
24 in their incident reports about the reason why the taser
25 was applied?

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1 A I read the incident reports, yes.

2 Q Okay. And what is your understanding of the
3 reasoning described in the incident reports?

4 A They described that there's resistance.

5 Q Okay. Did you understand as to whether they were
6 attempting to remove the handcuffs?

7 A Yes.

8 Q Is it your understanding that they were attempting
9 to overcome resistance so that the handcuffs could be
10 removed?

11 A Yes.

12 Q All right. And in your view does that explanation
13 comply with professional standards?

14 A No. If a person is actively resisting you and you
15 feel this person is going to present bodily harm to you,
16 I know I would question them why are you taking the
17 handcuffs off. So they can become more combative and
18 have more fighting skill? It just does not make sense
19 to me.

20 Q All right. Just assume for a second that
21 Mr. Kingsley for some reason, he didn't want his
22 handcuffs removed; he was, in fact, tensing them up and
23 tried to prevent them from being removed. Are there
24 other options that the deputies could have used in this
25 situation instead of a taser?

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1 A Yes.

2 Q What?

3 A I guess the next option is just time. Cooler
4 heads. Trying to resolve it a little bit more
5 peacefully. Another option that was discussed was the
6 use of a chair. I don't know what all Monroe County has
7 available to them, but it's very clear to me that there
8 was no active resistance. Using a little bit more time
9 and diplomacy might have resolved this.

10 Q And again, just to be clear, is it preferable to
11 leave somebody in handcuffs alone?

12 A No.

13 Q What would you do, in fact, if you were to back off
14 a little bit? How would you handle that situation?

15 A Well, there's something that -- and I believe that
16 one of the -- that Lieutenant Conroy touched on
17 override. Override is when you see -- and this is also
18 trained in other areas of the academies -- override is
19 when you see that officers are getting frustrated.
20 They're having problems dealing with somebody. So maybe
21 somebody, kind of a new face, a new approach can step in
22 there and try to take over. So there's an officer
23 override factor that, you know, maybe Lieutenant Conroy
24 could have stepped in and said back out from here. And
25 Mr. Kingsley, let's discuss this. Take a time out, if
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1 you will. That's one area that you can use.

2 Another area is that you can maintain observation
3 of him or maybe having somebody close by and just give
4 him a little time right now. I just don't see that.
5 You know, what is the urgency here.

6 Q Okay. I'd like to ask you about the incident
7 reports that you said you reviewed. First of all, are
8 you -- are you familiar with procedures that officers
9 use to write incident reports?

10 A Yes.

11 Q All right. And in general, how should an officer
12 writing an incident report involving the use-of-force
13 document that use?

14 A Well, they need to articulate their use of force.
15 First thing they have to do is identify the actions
16 factually as to why they had to use the force.

17 The next thing they do is they have to identify
18 what tactics they used to respond to that level.

19 Last thing that they would do is to describe
20 whether there was follow-through procedures, whether
21 that's medical or just talking to the person, calming
22 them down, whatever that they would use as well. All
23 that has to be factual.

24 Q And in writing about an incident report, would you
25 expect that an officer would sort of describe the worst

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1 behavior that a subject had exhibited in justifying use
2 of force?

3 A An officer would describe all the behavior that
4 would go into their justification for the use of force.

5 Q Now, you've reviewed the incident reports filed by
6 the officers in this case; correct?

7 A Yes, I have.

8 Q And in your view, did any of those reports describe
9 what you would characterize as active resistance?

10 A No.

11 Q All right. I'd like to look at some of these
12 reports if you can, so I'm going to ask you first to
13 look to Plaintiff's Exhibit 12.

14 A Okay. I'm here.

15 Q And could you describe to me what Plaintiff's
16 Exhibit 12 is.

17 A It appears to be the incident report from Sergeant
18 Hendrickson.

19 Q And you considered this in forming your opinion?

20 A Right.

21 MR. PARDON: We're going to move to admit this
22 report.

23 MR. JONES: No objection.

24 MR. PARDON: If I may publish it to the jury
25 then on the document camera. May I ask for -- may I
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1 have it published to the jury, Your Honor?

2 THE COURT: Oh, yes. It's received.

3 MR. PARDON: Thank you.

4 BY MR. PARDON:

5 Q Could you turn to page three of the report. Now,
6 this will be admitted, so the jury will get to look at
7 it. So, I'm going to ask you to describe what is being
8 -- what it says here; and in fact, if you want to read
9 it out loud, that's okay too.

10 A What I did in forming my opinion is I kind of broke
11 these things down. For instance, the first sentence in
12 there "Mr. Kingsley became physically resistive," comma.
13 That is a very broad and vague interpretation. What is
14 physically resistive? Struggling and trying to get up?
15 I really didn't see that on the video. And again, it's
16 just not well articulated here.

17 "He was told to stop, relax, and stop resisting
18 numerous times." That's definitely documented on the
19 video. He continued to resist and would not comply with
20 any order given to him.

21 "I placed my knee and lower leg across
22 Mr. Kingsley's upper back and applied pressure to help
23 maintain control and keep him from resisting and
24 struggling with officers." Again, kind of vague and
25 not --

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1 MR. JONES: I'm going to object to the
2 testimony. Vagueness of the report. It's irrelevant.

3 THE COURT: I'm sorry, I can't hear you.

4 MR. JONES: Objection. Relevance.

5 THE COURT: Sustained.

6 BY MR. PARDON:

7 Q In your view, Mr. Landers, is this an adequate
8 description of Mr. Kingsley's behavior such that it
9 would justify -- that would describe active resistance?

10 MR. JONES: Objection, Your Honor. Relevance.

11 THE COURT: Sustained.

12 BY MR. PARDON:

13 Q Okay. We can set this aside then for a second.

14 MR. PARDON: Your Honor, may I approach the
15 bench for a second?

16 THE COURT: You may. Actually we'll take a
17 recess at this time and we can take it up. We'll send
18 the jury out and then we'll take it up. Fifteen
19 minutes. Please remember not to talk about the case.
20 Leave your notepads on your chairs.

21 (Jury excused from courtroom at 3:13 p.m.)

22 THE COURT: Mr. Pardon.

23 MR. PARDON: I'm going to embarrass myself,
24 Your Honor, and state that I don't understand the
25 objection and I don't understand the ruling, and I'm
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1 wondering if I could --

2 THE COURT: My understanding was that Mr. Jones
3 was objecting to the fact that Mr. Landers was just
4 reading the report and analyzing the report as to
5 whether that was enough to justify the actions that were
6 taken by the officers. It seemed to me that that was an
7 appropriate objection. We saw what was happening in the
8 video. At least that was my understanding of what you
9 were objecting to Mr. Jones.

10 MR. JONES: That was my objection.

11 MR. PARDON: Okay. And I guess my point was
12 that Mr. Landers is an instructor who knows the sorts of
13 things that police officers are supposed to write in a
14 report and how they're supposed to justify what they're
15 doing, and in his view, the descriptions don't do that.
16 That's what I was trying to get across. The
17 descriptions do not adequately describe active
18 resistance.

19 THE COURT: Well, that may be a failure of the
20 report writer, but I think we should be looking at what
21 actually happened and whether that justified what was
22 done rather than Mr. Hendrickson's or somebody else's
23 view or idea of what happened.

24 MR. PARDON: Okay. Thank you.

25 THE COURT: Okay. We'll resume in 13 minutes.
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1 (Recess 3:15-3:28 p.m.)

2 (Jury brought in courtroom at 3:28 p.m.)

3 THE COURT: Mr. Pardon.

4 MR. PARDON: Thank you, Your Honor.

5 BY MR. PARDON:

6 Q Mr. Landers, are you aware that the night before
7 this incident Mr. Kingsley had made a comment about
8 calling out the CERT team?

9 A Yes. I did read that in the report.

10 Q Okay. Does this indicate to you that
11 Mr. Kingsley's actions in the receiving cell represented
12 a threat to the officers?

13 A No.

14 Q And why not?

15 A Officers are judged on the use of force at the
16 instant they use their force. They can use background
17 information as precursory information or what we call
18 *threat assessment*, but that statement was made many
19 hours ago and it doesn't match the physical observations
20 that they were presenting at the time.

21 Q Now you heard testimony today about how
22 Mr. Kingsley was not cooperating in terms of not
23 following instructions; correct?

24 A Yes.

25 Q All right. Does that mean that there's a potential
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1 for threat or active resistance?

2 A No. There's a difference between a risk and a
3 threat. Risk, I mean every police officer that walks
4 around can say that everybody is a risk to them,
5 therefore they can use whatever force they want. That's
6 why we have justifications for force. That's why we
7 have training. That's why we try to, you know, instill
8 the theory in officers, starting out at the beginning of
9 their careers in the academies, that there's a
10 difference between a risk. Your job is inherently
11 risky.

12 There's that, and then there's actual live threats.
13 Those threats are based upon your observations, your
14 training and experience, and you must react to them in a
15 very reasonable manner.

16 Q Okay. Could you look at Plaintiff's Exhibit 67,
17 please.

18 A Okay.

19 Q Could you identify what Plaintiff's Exhibit 67 is?

20 A It's the Principles Of Subject Control Manual from
21 June of 2012.

22 Q And is that sometimes referring to as the POSC
23 Manual you described?

24 A Yes, it is.

25 Q And did you utilize this Manual in forming your
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1 opinions in this case?

2 A Yes, I did.

3 MR. PARDON: I move to admit Plaintiff's
4 Exhibit 67.

5 MR. JONES: I'm going to object on the grounds
6 that it's dated June 2012, two years after the incident.

7 MR. PARDON: I can do a follow-up question if
8 you want.

9 THE COURT: All right.

10 BY MR. PARDON:

11 Q Does the version that's dated 2012 differ
12 significantly from the version that was in effect in May
13 of 2010?

14 A No. They just basically try to make it more in
15 line to the DAAT Manual.

16 THE COURT: I'm sorry, they make it more what?

17 THE WITNESS: I'm sorry. They were trying to
18 make it more in line with the Defensive and Arrest
19 Tactics Manual, but the theories and the tactics are
20 still the same.

21 BY MR. PARDON:

22 Q Does it differ in any way that you believe is
23 relevant to your assessment in this case?

24 A No, it does not.

25 MR. PARDON: Your Honor, I would move --
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1 THE COURT: You still object?

2 MR. JONES: I still object.

3 THE COURT: The objection is sustained.

4 BY MR. PARDON:

5 Q Okay. Could you turn to -- we'll close that off.

6 Could you turn to Plaintiff's Exhibit 10. That will
7 probably be in the first binder.

8 Actually before I ask you any questions about this
9 incident, I'd like to ask you of your knowledge with
10 respect to the POSC Manual that was in effect as of May
11 2010. Does the POSC Manual say anything in particular
12 about the use of force in a jail setting that you think
13 is relevant to your field in this case?

14 A Could you be more specific?

15 Q Does the POSC Manual say anything with respect to
16 the ability to wait out incidents that may be of
17 relevance to your opinion in this case?

18 A Yeah. Understand that both POSC and DAAT use the
19 Disturbance Resolution Model. The Disturbance
20 Resolution Model is that guide that I spoke of that each
21 one of those draws from. And then the tactics on how
22 you apply your force are very similar in both areas.
23 What POSC kind of goes into more detail with is that
24 because you are working in a jail setting where although
25 people can have make-shift weapons, there are riots and

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1 things like that, you're still working in a more
2 controlled environment than you are when you're working
3 in the street or a back alley or somebody's bedroom
4 trying to take them into custody. So there's a stronger
5 emphasis in POSC to weed out incidents instead of being
6 more quick to use force.

7 Q Okay. Turning your attention to Plaintiff's
8 Exhibit 10 that I just asked you to look at. Could you
9 describe what Plaintiff's Exhibit 10 is.

10 A It's the Monroe County Jail Use-of-Force Policy.

11 Q Did you take this into account in considering your
12 opinions in this case?

13 A Yes, I did.

14 MR. PARDON: Your Honor, I'm going to move to
15 admit Plaintiff's Exhibit 10.

16 THE COURT: Objection any?

17 MR. JONES: No objection, Judge.

18 THE COURT: Received.

19 BY MR. PARDON:

20 Q All right. Did you review this policy?

21 A Yes, I did.

22 Q And how is this policy relevant to your opinion in
23 this case?

24 A It's relevant that by state, state statute, every
25 agency is required in the State of Wisconsin -- by every
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1 agency I mean a law enforcement agency, including
2 sheriff's departments as Monroe County is -- they're
3 required by state statutory to have a policy on use of
4 force. What policies are in the State of Wisconsin is
5 they are expectations of performance for their
6 employees.

7 So upon reviewing this, I basically wanted to put
8 myself in the shoes of the Monroe County deputy as to
9 what was their expectation of performance in this
10 incident.

11 Q Okay. Could you turn to page 36 of the policy.

12 A That would be Monroe 36?

13 Q Monroe 36. I'm sorry. It says Monroe and then
14 there's a bunch of zeros and it ends in 36.

15 A Okay.

16 Q I'm calling your attention to this paragraph that's
17 down at the bottom of the page that I have placed a
18 yellow highlighter next to on the document camera here.

19 What is being described there?

20 A It's being -- what's being described is -- it's an
21 older version of the Disturbance Resolution Model.

22 Q Okay. And does it continue on to page 37?

23 A Yes, it does.

24 Q Okay. And with respect to page 37, is there
25 anything here that informs your opinion about whether

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1 the deputies complied with the Monroe County policy in
2 this case?

3 A In particular attention is No. 4, "Intermediate
4 weapon and the use of a stun device or an electronic
5 security belt."

6 MR. JONES: I'm going to object to the
7 testimony, Your Honor, as being irrelevant.

8 MR. PARDON: May I?

9 THE COURT: Mr. Pardon. Oh, I thought you
10 wanted to be heard.

11 MR. PARDON: I do.

12 THE COURT: Okay. Go ahead.

13 MR. PARDON: I mean it's in his report and it's
14 relevant to the expectations of how force was to be
15 used.

16 THE COURT: I'll overrule the objection. I
17 think this is appropriate testimony.

18 BY MR. PARDON:

19 Q Okay. You were referring to Sec. 4 I think of the
20 report. How does that inform your opinions in this
21 case?

22 A It informs my opinions that the expectation of
23 performance by Monroe County employees was that the
24 intermediate weapon, which would be in today's language
25 -- actually language at the time, but it was not

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1 updated, would be protective alternative. So what
2 they've essentially done is they said that where the
3 state has said that you can use a taser or a stun device
4 at a level of control alternatives which is -- control
5 alternatives would again be when you're facing active
6 resistance or threat, they put it at one level even
7 higher. Now --

8 THE COURT: I'm sorry, when you say *they*, who
9 are you talking about?

10 THE WITNESS: Monroe County. I'm sorry, Ma'am.
11 They put that at one level higher. So this is at a
12 level that is in today's time, you would be faced with
13 ongoing resistance or assaultive behavior in which you
14 really have a definitive fear that you're going to be
15 seriously hurt by this person.

16 So what Monroe County did is they told their
17 deputies even though the state is saying this, you can
18 use the taser at a lower level, we expect you to use it
19 at an even higher level, which would be equal to use of
20 a baton.

21 BY MR. PARDON:

22 Q All right. Set that aside then. Just briefly
23 again then, could you, just to sum it up, summarize your
24 opinion about why the use of the taser was not
25 appropriate in this case?

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1 A There was no active resistance. There was no
2 intentional threat of bodily harm against any of the
3 deputies that were there.

4 Q All right. I'd like to ask you about a second
5 opinion you expressed in this case. You testified
6 earlier that the handcuffs were improperly applied. Do
7 you recall that?

8 A Yes, I do.

9 Q All right. And that that, in fact, may have led
10 to -- it was possible that that led to tension and pain
11 on the part of Mr. Kingsley. Do you recall that?

12 A Yes.

13 Q All right. And just to be clear, are you saying
14 that there was resistive tension by Mr. Kingsley?

15 A I'm just saying that that was what was reported in
16 the officers' reports.

17 Q Now you said that the handcuffs were put on
18 improperly and I'm wondering if you could just describe
19 and perhaps demonstrate to the jury a proper means of
20 putting on a handcuff.

21 A Okay. Handcuffs are generally placed on a person
22 in either a compliant or noncompliant fashion, whatever
23 the subject is exhibiting at the time. In a compliant
24 fashion, officers are trained how to verbalize with the
25 person, how to stabilize a person, how they move in to

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1 approach and then apply the handcuffs in a way that it's
2 consistent with training.

3 One thing that -- let me jump to a noncompliant. A
4 noncompliant is usually trained when a person is on the
5 ground, whether they were directed to the ground or
6 forced to the ground. And then there's certain
7 stabilization tactics that officers use to try to keep
8 them on the ground so they can commence handcuffing.
9 When the handcuffs are applied, there's two key things
10 that must be done in both the compliant and noncompliant
11 situation. And it has to be done when it's feasible; if
12 there's time that allows this to occur. When a person
13 is compliant -- when the handcuffs are applied in a
14 compliant fashion, I really struggle to try to find a
15 time when there's not enough time to do this, but the
16 two things that they have to do is check the fit of the
17 handcuffs and then do what we call a double or a safety
18 locking of the handcuffs. What this does is it prevents
19 the handcuffing from tightening up on the subject's
20 wrist.

21 Q Did you bring any handcuffs with you today that you
22 could demonstrate that?

23 A Yes, I did.

24 MR. PARDON: Your Honor, if I may, I would like
25 us to stand and perhaps Mr. Landers could just -- I'll
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1 go like this and he can demonstrate on my hands. Would
2 that be --

3 THE COURT: All right.

4 BY MR. PARDON:

5 Q You brought the keys, I hope.

6 A I did. The handcuffs have a single -- single
7 strand and double strand and the teeth go in the
8 ratchet. The handcuff -- obviously you can kind of see
9 by the teeth of the ratchet, there's kind of a floating
10 device in there that kind of catches it so it doesn't
11 allow to pull back out. When you double lock it, you in
12 essence put another catch in there in the teeth that
13 don't allow it to move either out or forward so they
14 can't tighten. So right now I'm checking both of
15 these --

16 MR. JONES: Your Honor, could I ask that
17 Mr. Landers sort of orient himself so that my clients
18 can see what it is that he's doing? He has his back to
19 the defendants. Maybe if he stands in front of the
20 witness stand --

21 THE COURT: Right. Why don't you stay to the
22 side of microphone. You can use the microphone on the
23 witness stand. You can still be standing up. Just be
24 sure that the jurors can see you.

25 THE WITNESS: Does this work better? Can you
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1 still see? So I was just explaining that the handcuffs
2 kind of ratchet through. And then by double locking,
3 which different handcuffs have different mechanisms to
4 double lock. In this particular model, there's a little
5 hole there and usually the tip of a handcuff key has a
6 pin on it, and by pressing the pin into the hole, it
7 double locks it so it can't tighten up.

8 BY MR. PARDON:

9 Q Do you want to just illustrate how to apply them?

10 THE COURT: Wait. The jurors have to see it.

11 (Handcuffs are applied)

12 A That's how they're properly applied. I check for
13 fit and I do a lock on the handcuffs.

14 Q Could you please unlock them.

15 (Handcuffs removed)

16 Thank you. Mr. Landers, how do you know that the
17 cuffs were not applied properly in this case?

18 A Two reasons. One is that they were not initially
19 reported to be properly applied. Second is that I
20 believe Deputy Blanton in his incident report, after the
21 taser was applied, described that he then double locked
22 the handcuffs at that time.

23 Q Okay. So if he double locked the handcuffs at that
24 time, that means that they weren't locked earlier;
25 correct?

BRIAN LANDERS - DIRECT

1 A You can't double lock them twice.

2 Q Okay. And how could the improper handcuffing have
3 contributed to any tension or pain in this case by
4 Mr. Kingsley -- on Mr. Kingsley's part?

5 A They could be tightened with any amount of pressure
6 on the single strand of the handcuff. The handcuffs are
7 not comfortable to begin with. That is why it's very
8 important and it's stressed in the training, the double
9 lock or safety check, to check for fit, and double lock
10 the handcuffs to prevent the handcuff from tightening,
11 whether that's intentional or just through the movement
12 of a person.

13 Q Okay. Does the fact that Mr. Kingsley didn't
14 specifically complain to the deputies that his cuffs
15 were too tight, does that have any effect on your
16 opinion here?

17 A No.

18 Q And why not?

19 A Well, people will, I guess, take and relate pain in
20 different manners. You know, my personal experience is
21 that not everybody will say that they're in pain for
22 whatever reason.

23 Q Okay. Were there any indications in the videotape
24 to you that you witnessed that Mr. Kingsley may have had
25 the handcuffs on too tight; that the handcuffs may have

BRIAN LANDERS - DIRECT

1 been on too tightly?

2 A There were several points in the video: The
3 growling; kind of the exertion of his voice in kind of a
4 grumbling manner would be an indicator to me that there
5 might be something wrong.

6 Q Okay. Could you turn to Plaintiff's Exhibit 50.

7 A Okay.

8 Q Could you identify that what that is?

9 A This is the Monroe County Jail policy on the use of
10 restraints.

11 Q And did you consider this in forming your opinions
12 in this case?

13 A Yes, I did.

14 MR. PARDON: Your Honor, I'd move to admit
15 Plaintiff's Exhibit 50.

16 MR. JONES: No objection.

17 THE COURT: Received.

18 BY MR. PARDON:

19 Q Could you turn to page 60 of the report -- of the
20 policy. It's the one that says *Monroe 60* on the bottom.

21 A Okay.

22 Q I've highlighted page 60 on the document camera
23 here with my highlighter, that is now wearing out.
24 Could you now describe this portion of the policy and
25 how that affects your view in this case?

BRIAN LANDERS - DIRECT

1 A Again, the policy is an expectation of performance
2 by the deputies that work there, and the expectation of
3 performance was an employee should be watching for signs
4 that the restraints were not applied appropriately.

5 Q And is that what this policy says?

6 A Yes.

7 Q You can set that aside. Now Mr. Landers, are there
8 circumstances where it would be acceptable not to double
9 lock or safety lock with handcuffs?

10 A Oh, definitely.

11 Q What kind of circumstances would that be?

12 A When you're in -- you need to immediately remove
13 somebody. For instance, if an officer is involved in a
14 high speed chase and stops a vehicle and they're drawing
15 a person out at gunpoint but there's other people in the
16 vehicle that they're still worried about. There might
17 be a case where another officer comes in and does the
18 handcuffing of the first person drawn out and get them
19 out of the line of fire and then do the safety lock and
20 double locking, checking for fit once they're behind
21 like another squad car or something that presents some
22 cover to the officers.

23 Q Do you believe there was any circumstance in this
24 case that would justify not safety locking of the
25 handcuffs initially?

BRIAN LANDERS - DIRECT

1 A No.

2 Q And why is that?

3 A They had plenty -- apparently plenty of time to
4 apply the fit and double lock the handcuffs. There
5 didn't appear to be any rush.

6 Q In any of the incident reports you reviewed, was
7 there any documentation of any reason for not safety
8 locking the handcuffs initially?

9 A I saw no other pressing hazards.

10 Q Okay. I'd like to ask you now about a third
11 opinion you expressed and that concerns the control
12 tactics used by Sergeant Hendrickson in the receiving
13 cell. Do you recall providing that opinion?

14 A Yes.

15 Q Could you briefly just summarize that again?

16 A That the control tactics were unreasonable.

17 Q Yes. And why is that?

18 A Some of the force used by Sergeant Hendrickson upon
19 Mr. Kingsley was not articulated as to reasoning why,
20 and then also the placement of his knee on
21 Mr. Kingsley's spine/neck area.

22 Q Okay. I'd like you to turn to Plaintiff's Exhibit
23 108. That's likely in the second binder. It's in the
24 third binder which you probably figured out by now.

25 A I found it.

BRIAN LANDERS - DIRECT

1 Q Could you briefly describe what Plaintiff's Exhibit
2 108 is.

3 A It's a diagram of a human body that is used in both
4 the DAAT and POSC training that show sensitive areas on
5 the body.

6 Q All right. And did you consider this in forming
7 your opinion in this case?

8 A Yes.

9 MR. PARDON: Your Honor, I move to admit
10 Plaintiff's Exhibit 108.

11 MR. JONES: No objection.

12 THE COURT: Received.

13 MR. PARDON: Thank you.

14 BY MR. PARDON:

15 Q Okay. You now see Plaintiff's Exhibit 108 on the
16 screen here. Could you describe what -- how this is
17 relevant to your opinion in this case?

18 A Yeah. This diagram again is used in defensive
19 tactics and in POSC to demonstrate areas on the human
20 body that have a high propensity for injury. So
21 therefore throughout the training, we teach the students
22 that the application of force upon these vital areas
23 must have a high level within a Disturbance Resolution
24 Model.

25 Q Okay. And are there areas here that are described
BRIAN LANDERS - DIRECT

1 as areas where you have a high propensity for injury and
2 would be better not to use -- not to apply pressure to?

3 A Yes. Particularly the head, the neck, the spinal
4 area, the center of the chest cavity and the groin.

5 Q Okay. Thank you. I'm going to -- you can take
6 this down, and I'm going to ask if we could now have the
7 camera switched back to the laptop.

8 I'd like to look at the video again with you with
9 respect to your third opinion and I'd like to discuss
10 this with respect to your opinion about Sergeant
11 Hendrickson's tactics. Let me just get this to the
12 location I would like to stop it or start it with.

13 All right. For the record I've started it at
14 6:44:25 and I'm going to play it forward a little bit.

15 (Video played)

16 All right. Now I've now stopped the video at
17 6:44:30 and I'm wondering if you could describe what
18 you've observed with respect to Sergeant Hendrickson's
19 control tactics.

20 A It appears as if his left foot is on the ground and
21 his right knee is on the center of Mr. Kingsley's back
22 or spine area.

23 Q Do you know how long that remains there?

24 A No. I believe at a certain point he moves it or
25 shifts.

BRIAN LANDERS - DIRECT

1 Q Okay. So we'll go ahead and I'm going to start the
2 video again.

3 (Video played)

4 All right. Now I've just stopped the video at
5 6:44:51 and I'm wondering if you could describe what you
6 have observed here and how that relates to your opinion
7 with respect to the control tactics.

8 A It appeared that Mr. Kingsley lifted his head off
9 the bunk and Sergeant Hendrickson's response was to -- I
10 don't know how to describe it other than a downward
11 thrust or force of his head, neck or spine area back
12 into the bunk, along with it appears both hands and his
13 knee.

14 Q Okay. And is this articulated anywhere in the
15 reports that you -- anywhere in Sergeant Hendrickson's
16 report?

17 A No, it's not.

18 Q Should it be?

19 A It's an application of force. It should be.

20 Q I'm going to play the video ahead for a little bit.

21 (Video played)

22 All right. Now, I've stopped it at 6:45:11. Is
23 there anything that you observed in that segment that
24 bears on the control tactics used by Sergeant
25 Hendrickson?

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1 A It appears that there appears to be several more
2 motions. The video was hard to tell, but at least you
3 can tell by the torso of Sergeant Kingsley that there
4 appears to be kind of a motion forward and downward --

5 THE COURT: Did you mean -- you didn't mean
6 Sergeant --

7 THE WITNESS: I meant Sergeant Hendrickson.
8 I'm sorry. Motions forward and downward by Sergeant
9 Hendrickson on Mr. Kingsley, as well as the knee right
10 now is somewhere near the upper torso or neck area.

11 MR. JONES: Object to the testimony, Your
12 Honor. From the video you can't tell where the knee is.

13 THE COURT: I'm sorry, you can't tell what?

14 MR. JONES: He just testified where Sergeant
15 Hendrickson's knee was at this point in the video and my
16 objection is --

17 THE COURT: Sustained.

18 MR. JONES: -- you really can't see that.

19 THE COURT: Sustained.

20 BY MR. PARDON:

21 Q Okay. With respect to the downward thrusting
22 motion that you described, should that be articulated in
23 the incident reports?

24 MR. JONES: Objection. Irrelevant.

25 THE COURT: Sustained.

BRIAN LANDERS - DIRECT

1 BY MR. PARDON:

2 Q Okay. I'm going to play the video ahead a little
3 bit.

4 (Video played)

5 Now, can you observe Sergeant Hendrickson's knee at
6 this -- the position of his right leg at this point?

7 A I can observe the position of his right leg appears
8 to be somewhere on Mr. Kingsley.

9 Q Now, I'm going to ask you to then watch the video
10 and describe if there's any point at which you can
11 identify where Sergeant Hendrickson's leg is and how
12 that may impact your opinion with respect to the control
13 tactics used.

14 (Video played)

15 A Right there.

16 Q Okay. And when you said *right there*, I've now
17 stopped it at 6:46:24. I'm going to actually move it
18 ahead a little bit.

19 (Video played)

20 And I've now stopped it at 6:46:26. Can you
21 identify where Sergeant Hendrickson's knee is here?

22 MR. JONES: Objection, Your Honor.

23 THE COURT: Sustained.

24 BY MR. PARDON:

25 Q Do you have an opinion about whether the placement
BRIAN LANDERS - DIRECT

1 of Sergeant Hendrickson's knee is appropriate here?

2 MR. JONES: Objection, Your Honor.

3 THE COURT: Sustained.

4 BY MR. PARDON:

5 Q All right. Now Mr. Kingsley testified that

6 Sergeant Hendrickson slammed his head into the bunk.

7 Are you saying that --

8 MR. JONES: Objection. I don't think that was
9 his testimony. Mischaracterizes the testimony.

10 THE COURT: Sustained.

11 MR. PARDON: I apologize. I didn't mean to
12 mischaracterize any testimony.

13 BY MR. PARDON:

14 Q Are you saying that the two downward thrusting
15 motions that you've observed here constitute slamming
16 Mr. Kingsley's head into anything?

17 MR. JONES: Objection.

18 THE COURT: Sustained.

19 BY MR. PARDON:

20 Q Do the two downward thrusting motions that you
21 described, are they a trained technique?

22 A No.

23 Q And in your view, were they justified under the
24 circumstances here?

25 A There was no articulation to what those were, so --
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1 MR. JONES: Objection. Move to strike.

2 THE COURT: Overruled.

3 THE WITNESS: There were no articulations of
4 what those were in the report, so I don't know what that
5 tactic was or what the intent was.

6 BY MR. PARDON:

7 Q All right. And given the level of activity of
8 Mr. Kingsley, do you believe that they fit -- were
9 justified?

10 A No.

11 Q All right. To finish up, I would just like, if you
12 could reiterate for the jury -- well, that's fine. I'm
13 not going to ask you that question. I have one final
14 question.

15 Can you explain why you agreed to testify in this
16 case?

17 MR. JONES: Objection. Relevance.

18 THE COURT: Sustained.

19 MR. PARDON: Okay. I have no further
20 questions, Your Honor. (4:02 p.m.)

21 THE COURT: Mr. Jones.

22 MR. JONES: Thank you, Judge.

23 CROSS-EXAMINATION

24 BY MR. JONES:

25 Q If you could bear with me for just one second as I
BRIAN LANDERS - CROSS

1 get my place.

2 A Certainly.

3 Q There have been a lot of -- if we could remove the
4 exhibit from the -- thank you.

5 You've been asked obviously a lot of questions
6 about training in Wisconsin; correct?

7 A Correct.

8 Q And you were asked a number of questions about a
9 couple of policies of the Sheriff's Department or the
10 Jail; correct?

11 A Correct.

12 Q And I think you were asked some questions about
13 some or at least one of the reports written by one of
14 the officers; correct?

15 A Correct.

16 Q In your experience -- well, one more question. You
17 also testified that certain elements of force that were
18 used in this instance, in your opinion, were
19 unreasonable; correct?

20 A Correct.

21 Q In your experience, the fact that an officer does
22 not follow his training to a tee, that does not
23 necessarily mean that the force used by the officer was
24 unreasonable; correct?

25 A Correct.

BRIAN LANDERS - CROSS

1 Q The fact that an officer does not follow his or her
2 department's policies, written policies to a tee, that
3 does not necessarily mean that any force used by the
4 officer was unreasonable; correct?

5 A Correct.

6 Q And an officer's report writing skills, whether
7 they're good or bad, does not mean necessarily that the
8 officer used unreasonable force; correct?

9 A Correct.

10 Q You offered an opinion about the way that the
11 handcuffs were applied in this incident; correct?

12 A Yes.

13 Q You did a demonstration with Mr. Kingsley's counsel
14 of how you might put a pair of handcuffs on an
15 individual; correct?

16 A Yes.

17 Q And when you did that, Mr. Pardon was standing with
18 his arms outstretched towards you; correct?

19 A Correct.

20 Q And his hands were a distance apart that you were
21 able to put the handcuffs on both; correct?

22 A Correct.

23 Q Mr. Pardon, as you were doing that, didn't move his
24 hands at all; did he?

25 A No, he did not.

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1 Q He did not have his arms or hands extended at his
2 sides; did he?

3 A No, he did not.

4 Q He did not have the muscles in his arms flexed; did
5 he?

6 A Not that I could feel.

7 Q And Mr. Pardon didn't move his hands at all; did
8 he?

9 A No.

10 Q And correct me if I'm wrong, but even with
11 Mr. Pardon standing there with his hands outstretched
12 and not moving, it's not all that easy to get the key in
13 and out of the handcuff; is it?

14 A Generally speaking, no.

15 Q It's a small hole and a small key; correct?

16 A Yeah.

17 Q And if an individual is moving his arms around as
18 you're trying to get a key in to get the handcuff off,
19 that makes it tough to get the key into the hole;
20 correct?

21 A Definitely.

22 Q And if the handcuffs go on a subject where --
23 strike that. Let me back up.

24 The handcuffs have a flat face, correct, where the
25 hole is for the key?

BRIAN LANDERS - CROSS

1 A Yes.

2 Q And the hole for the key is on one side of the flat
3 face, but not the other; correct?

4 A That all depends upon the model of the handcuff.

5 Q The ones you were using as a demonstration have a
6 keyhole on one side only; correct?

7 A Correct.

8 Q Sometimes in a difficult situation an officer may
9 put the handcuffs on where the face -- where the hole is
10 is facing one way on one hand, but facing the other way
11 on the other hand; correct?

12 A Sure.

13 Q That can happen, can't it?

14 A Yes, it can.

15 Q Particularly if the subject is making it difficult
16 for the officer to put the handcuffs on in the first
17 place; correct?

18 A It can happen in any application of handcuffs.

19 Q And when that's true, the officer is going to have
20 to go to one side and handcuff the other, and then the
21 other side to unlock the second cuff; correct?

22 A Can you explain that? I don't know what you mean
23 by one side.

24 Q That question was not very good I'll admit. If the
25 keyhole is facing one way on one cuff and the other way

BRIAN LANDERS - CROSS

1 on the second cuff, the officer is going to have to go
2 at it from both sides to get those cuffs unlocked;
3 correct?

4 A On both sides of the handcuff.

5 Q Yes.

6 A Yes.

7 Q Now the opinion you're offering is that -- well,
8 you obviously were not there; correct?

9 A Correct.

10 Q And you have no personal knowledge as to whether
11 those handcuffs were double locked when Sergeant
12 Hendrickson put them on Mr. Kingsley; correct?

13 A Correct.

14 Q All you can go off of is what isn't in Sergeant
15 Hendrickson's report and the wording of Deputy Blanton's
16 report; right?

17 A Correct.

18 Q And then the opinion you're offering is that if
19 they were not double locked, it's possible that they
20 tightened over the course of the events; correct?

21 A Correct.

22 Q You are not telling us that you have any opinion as
23 to whether or not the cuffs actually tightened.

24 A Correct.

25 Q You don't have an opinion on that subject.

BRIAN LANDERS - CROSS

1 A No.

2 Q Can't say one way or the other.

3 A No, I can't.

4 Q And you have no personal knowledge as to whether
5 the cuffs were actually checked by Sergeant Hendrickson
6 for fit; correct?

7 A Correct.

8 Q You talked about how if handcuffs aren't double
9 locked, certain movements or pressure on the cuff may
10 cause it to tighten; correct?

11 A Correct.

12 Q And I would assume that there are lots of variables
13 where there might be pressure on a handcuff such that if
14 it's not tightened -- if it's not locked, it might
15 tighten; correct?

16 A Correct.

17 Q And if a handcuffed prisoner declines to walk and
18 officers carry the prisoner as a result, that might
19 cause the handcuffs to tighten; is that what you're
20 saying? Or would you agree?

21 A I would say it's possible.

22 Q It's possible. If a handcuffed prisoner pulls his
23 hands or arms apart while he's handcuffed, that might
24 cause the cuffs to tighten if they're not double locked;
25 correct?

BRIAN LANDERS - CROSS

1 A If there's exerting force upon the single strand,
2 then yes, it's possible.

3 Q If a handcuffed prisoner moves his hands around a
4 lot when they're not double locked, that might cause the
5 cuffs to tighten; correct?

6 A If there's exerting force upon the single strand.

7 Q Same thing if a prisoner moves his torso or his
8 upper body around if the handcuffs aren't double locked;
9 correct?

10 A Same response.

11 Q It's possible.

12 A It's possible.

13 Q But absent some sort of defect in the cuffs, if
14 they are double locked they will not tighten; correct?

15 A Correct.

16 Q Regardless of what the officer does and regardless
17 of what the subject does; correct?

18 A If they are properly double locked and there's no
19 defect in the cuff, then they should not tighten.

20 Q So if Sergeant Hendrickson hadn't double locked the
21 cuffs back in the original cell back in south block,
22 they would not have tightened over the course of the
23 events, assuming there wasn't a defect with the cuffs?

24 A Correct.

25 Q And if an officer does double lock the cuffs, he
BRIAN LANDERS - CROSS

1 would have no reason to suspect that they were
2 tightening; correct?

3 A That they were tightening?

4 Q Yes.

5 A Correct.

6 Q And if he double locks them and checks them for
7 fit, he would have no reason to believe that the fit
8 would change, would he?

9 A If he was the one who did it; correct.

10 Q He could basically rule out the handcuffs
11 tightening as a reason for however the subject was
12 behaving; correct?

13 A Unless there was a defect with the cuff.

14 Q Now obviously you've both today and before today
15 seen and heard the recording of what occurred in the
16 receiving cell; yes?

17 A Yes.

18 Q And you would agree that there's nothing that
19 Mr. Kingsley said that was recorded to the effect that
20 -- where he was telling the officers verbally that the
21 handcuffs were too tight; correct?

22 A He didn't make any statements like that, no.

23 Q He didn't say, in other words, "the handcuffs are
24 too tight."

25 A Correct.

BRIAN LANDERS - CROSS

1 Q Now obviously he made sounds while he was in the
2 receiving cell. We hear that on the recording; correct?

3 A Correct.

4 Q And you testified today that you thought those
5 sounds were indicative of him being in pain; correct?

6 MR. PARDON: Objection. Mischaracterizes the
7 testimony.

8 THE COURT: Sustained.

9 BY MR. JONES:

10 Q Do you know one way or the other what the sounds
11 that Mr. Kingsley was making meant?

12 A No.

13 Q And that's true even though you've looked at that
14 video and listened to that audio on numerous times;
15 correct?

16 A Correct.

17 Q You obviously agree that the officers were trying
18 to take the handcuffs off; correct?

19 A That's what was reported.

20 Q And you have no reason to doubt that?

21 A No, I don't.

22 Q And you would agree that being in handcuffs can be
23 dangerous for a person; yes?

24 A In certain situations, yes.

25 Q If you're left in a cell -- I'll be more specific.
BRIAN LANDERS - CROSS

1 If you're left in a cell like that receiving cell with
2 your hands handcuffed behind your back, that can pose a
3 risk to you as the person in handcuffs; yes?

4 A There would have to be more factors.

5 Q A person in handcuffs with their hands handcuffed
6 behind their back, they lose the ability to maintain
7 their balance with their arms and hands; correct?

8 A I guess first, I can't testify what a person -- the
9 balance or dexterity of a person. Are you saying this
10 person left alone?

11 Q Yes.

12 A A person being guarded? I guess I don't know what
13 your question is.

14 Q All right. I'll try to be more specific. If a
15 person is left alone, no one in the cell with him, in a
16 receiving cell like the one used in this case with their
17 hands cuffed behind their back, is that person at any
18 risk in that situation?

19 A Yes.

20 Q And the risk is that the person could stumble or
21 lose their balance, being handcuffed behind their backs,
22 and injures themselves as a result; correct?

23 A Correct.

24 Q You have never worked as a corrections officer, am
25 I right?

BRIAN LANDERS - CROSS

1 A Correct.

2 Q And the Wisconsin Dells Police Department where you
3 worked for a number of years does not operate a jail;
4 correct?

5 A Correct.

6 Q The police department has a holding cell; correct?

7 A Two.

8 Q Two holding cells. I stand corrected. And those
9 holding cells are used to detain people who have been
10 arrested before they're transported to a secure lockup;
11 correct?

12 A Correct.

13 Q And people don't stay in those holding cells for
14 more than four hours; correct?

15 A Correct.

16 Q So what did you mean when you testified that in
17 your experience you have administered a lockup?

18 A We still have to go through a booking procedure.
19 We still have to put people in and take people out of
20 that cell.

21 Q So what you were testifying to is administering, so
22 to speak, those temporary holding cells at the police
23 department?

24 A Yes.

25 Q Now I think you talked about, when talking about
BRIAN LANDERS - CROSS

1 your experience, experience you've had with jails run by
2 the four counties that are contiguous with Wisconsin
3 Dells; correct?

4 A Correct.

5 Q You never actually worked in any of those jails;
6 correct?

7 A No.

8 Q My statement was correct?

9 A Well, I've never worked for those jails. I was
10 employed when I was in those jails and whether I was
11 booking or interviewing, I mean that's technically
12 working in that jail.

13 Q You didn't work as a jailer in one of those jails;
14 did you?

15 A No, I did not.

16 Q You do not have any experience using a taser or
17 another electronic control device in a jail setting, do
18 you?

19 A No.

20 Q When officers are trained to get their
21 certification as corrections officers in Wisconsin, they
22 attend something that called *jail school*; right?

23 A I guess for point of clarification, I think of a
24 connectional officer as somebody who works in a jail or,
25 I'm sorry, a prison. So I would --

BRIAN LANDERS - CROSS

1 Q Let me ask it a different way because you can say
2 that. When someone becomes trained in Wisconsin to be a
3 jailer, so to work in a county jail --

4 A Yes.

5 Q -- that training is through what people generally
6 refer to as *jail school*; correct?

7 A Yes.

8 Q And that's a training program that lasts more than
9 100 hours; correct?

10 A I'd say there are 120 or 160 hours, depending upon
11 the program.

12 Q It changes from time to time; correct?

13 A It doesn't change, it just depends on what
14 technical college or what academy, how they facilitate
15 the program.

16 Q You have never taught any courses as part of that
17 formal jail school; correct?

18 A Correct.

19 Q We've talked about something called *POSC*,
20 Principles of Subject Control; yes?

21 A Yes.

22 Q And that is a training guide that is used to train
23 jailers, if I've got the phrase right, in Wisconsin;
24 yes?

25 A Yes.

BRIAN LANDERS - CROSS

1 Q You have never taught any courses about the POSC
2 training guide; correct?

3 A Correct.

4 Q And there was -- you were asked some questions
5 about your role in developing the DAAT training guide;
6 yes?

7 A Yes.

8 Q And your name is, in fact, in the DAAT training
9 guide; correct?

10 A Correct.

11 Q Your name is not in the POSC training guide, is it?

12 A No, it's not.

13 Q You were not involved in writing or developing
14 POSC, were you?

15 A No.

16 Q And jail school does not include training under the
17 DAAT training guide, does it?

18 A Is it specific -- are you saying is DAAT taught in
19 the jail school?

20 Q Do they use DAAT, the training guide itself, in
21 jail school?

22 A Well, the current POSC is based upon the DAAT
23 training.

24 Q But they use POSC, it's not DAAT.

25 A Correct.

BRIAN LANDERS - CROSS

1 Q Your highest level of education is a bachelor of
2 science?

3 A Correct.

4 Q Have you ever published any professional articles
5 or textbooks?

6 A No.

7 Q And you're serving as a paid expert in this
8 instance; correct?

9 A Yes.

10 Q I'd like to ask you about some materials in POSC.
11 If I could show you Exhibit 517. It will actually show
12 up on -- it should show up on your screen.

13 Do you recognize at least the first page of this
14 exhibit?

15 A It's the POSC Manual from June 2009.

16 Q So was this the manual that was in place and being
17 used at the time of the incident with Mr. Kingsley in
18 May 2010?

19 A It should have been.

20 Q If I could refer you --

21 MR. JONES: Actually I would move the admission
22 of 517, Your Honor.

23 MR. PARDON: No objection.

24 THE COURT: Received.

25 BY MR. JONES:

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1 Q If I could refer you to page two. Under POSC,
2 jailers in Wisconsin are trained that they are
3 authorized to use force to obtain legitimate
4 correctional objectives; correct?

5 A Correct.

6 Q That's on the bottom of page two? I'll highlight
7 that for you.

8 A Yeah, I see it. Correct, I'm sorry.

9 Q And under POSC, jailers are trained that legitimate
10 correctional objectives include moving an inmate, an
11 unwilling inmate from one location to another; correct?

12 A That's correct.

13 Q And they're also trained that a legitimate
14 objective for the use of force would be to prevent an
15 inmate from harming himself or herself; correct?

16 A That's correct.

17 Q They're also trained the legitimate objective for
18 using force is to gain control of a resistive or
19 combative inmate?

20 A Correct.

21 Q And they're also trained that a legitimate
22 objective to use force is to defend yourself or
23 themselves from physical assault.

24 A Correct.

25 Q Patrol officers in Wisconsin, so law enforcement
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1 officers out patrolling the community, they receive
2 similar training under DAAT; correct?

3 A Correct.

4 Q They are trained that they can use, legitimately
5 use force to obtain and achieve control of a resistive
6 subject?

7 A Correct.

8 Q And they are trained that they can legitimately use
9 force to defend themselves or others?

10 A Correct.

11 Q Force is obviously necessary at times; correct?

12 A Yes.

13 Q There are times when even the most skilled officer,
14 corrections officer, jailer or a law enforcement officer
15 is unable to get voluntary compliance from a subject;
16 yes?

17 A Yes.

18 Q And in those instances, force is sometimes
19 necessary to get that control and achieve a legitimate
20 law enforcement objective; yes?

21 A Yes.

22 Q You talked about a Disturbance Resolution Model;
23 yes?

24 A Yes.

25 Q And there was testimony about different modes
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1 within the Disturbance Resolution Model?

2 A Yes.

3 Q And one of the modes would be *presence*; yes?

4 A Yes.

5 Q A second would be *dialogue*?

6 A Yes.

7 Q A third would be *control alternatives*?

8 A Yes.

9 Q A fourth would be *protective alternatives*?

10 A Yes.

11 Q Such as the use of a baton?

12 A Correct.

13 Q And the first and highest would be the use of
14 deadly force; correct?

15 A Correct.

16 Q Control alternatives. That's in the middle of this
17 force Disturbance Resolution Model; yes?

18 A Yes.

19 Q So in theory, that comes after presence and
20 dialogue; yes?

21 A Yes.

22 Q And control alternatives includes tasers; yes?

23 A Yes.

24 Q It includes all forms of electronic control
25 devices; yes?

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1 A Yes.

2 Q But officers are trained -- let me be more
3 specific. Jailers are trained that they do not need to
4 go step-by-step through that Disturbance Resolution
5 Model; correct?

6 A Correct.

7 Q They do not have to necessarily first use presence
8 or dialogue before they can use a control alternative
9 like a taser; correct?

10 A Correct.

11 Q You've offered an opinion about the control
12 techniques used by Sergeant Hendrickson in the receiving
13 cell; correct?

14 A Correct.

15 Q And that has specifically to do with wherever he
16 had placed his knee on Mr. Kingsley or his shin on
17 Mr. Kingsley; correct?

18 A Partly, yes.

19 Q Okay. And the other part had to do with what
20 you've described, I think, as downward motions by Mr. --
21 Sergeant Hendrickson on Mr. Kingsley; correct?

22 A Correct.

23 Q Now you testified, when Mr. Pardon was asking you
24 questions, that you weren't sure what those downward
25 motions by Sergeant Hendrickson were; didn't you?

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1 A Yes.

2 Q And I think your words were they weren't well
3 articulated; correct?

4 A I'd have to refresh, but something to that, yes.

5 Q And you're telling us as you're sitting here today
6 that you're not sure what Sergeant Hendrickson was doing
7 at that point; correct?

8 A Correct.

9 Q And you would agree that it is difficult to tell on
10 the video exactly what was occurring at that point;
11 correct?

12 A Correct.

13 Q Even though you don't know what he was doing and
14 it's hard to tell on the video what was occurring,
15 you're offering us the opinion, the sworn testimony that
16 you believe that force was unreasonable?

17 MR. PARDON: Objection.

18 THE COURT: Overruled.

19 BY MR. JONES:

20 Q Is that correct?

21 A Correct.

22 Q Now are you aware that Sergeant Hendrickson has
23 said that he had his leg across Mr. Kingsley's shoulders
24 and upper back and not directly on his spine or neck?

25 Are you aware of that?

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1 A Can you repeat that question?

2 Q Sure. Are you aware that Sergeant Hendrickson has
3 said that he didn't have his knee directly on
4 Mr. Kingsley's spine or neck, but instead he had it
5 across his shoulders or upper back?

6 A I guess I'm not certain where he said that.

7 Q So you don't know one way or the other.

8 A That's not what I'm saying.

9 Q You're not sure if he said that -- has said that?

10 A I'm not certain that he said that, no.

11 Q And you obviously would agree -- we've watched the
12 video -- that it's very difficult to tell exactly where
13 Sergeant Hendrickson's leg is on Mr. Kingsley for a
14 great deal of the video; correct?

15 MR. PARDON: Objection. He didn't watch --

16 THE COURT: Overruled.

17 THE WITNESS: Can you repeat the question?

18 MR. JONES: Sure. Gladly.

19 BY MR. JONES:

20 Q You would agree that it is extremely hard to
21 tell -- strike that. Let me rephrase.

22 You would agree that it is hard to tell where
23 Mr. Hendrickson's shin or leg is on Mr. Kingsley for a
24 great deal of the video; correct?

25 A I am basing my opinion that there is a length of
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1 time on the video where it's clear to me that the knee
2 is over his spine.

3 Q Do you mean over his spine or on his spine?

4 A It appears to be on his spine.

5 Q Do you mean that the knee was directly on the spine
6 or do you mean just that the leg was across his upper
7 back?

8 A From the video that I witnessed, it appeared to me
9 that the knee was on his spine.

10 Q So when we go to the video or if we look at the
11 video, what you're saying is that we're going to be able
12 to see that Mr. -- Sergeant Hendrickson's knee, so the
13 knee itself, was directly on Mr. Kingsley's spine?

14 A That's my observation.

15 Q And so necessarily, because of anatomy, that means
16 that you say you can see the knee was directly in the
17 middle of Mr. Kingsley's back.

18 A That's my observation.

19 Q And do you know whether Mr. Kingsley moved at all
20 underneath Sergeant Hendrickson when he had his knee
21 wherever it was on him?

22 A At the point of the video where I can see the knee
23 on the spine, it did not appear that Mr. Kingsley moved.

24 Q Well sure, if you stop the video. So that, as you
25 say, you can see where his knee was, he's obviously not

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1 moving when you stop the video; yes?

2 A Correct.

3 Q And so are you saying that you can tell one way or
4 the other when you restart the video whether
5 Mr. Kingsley was moving underneath Sergeant Hendrickson?

6 A When you back that video up, it does not appear
7 that the torso is moving.

8 Q And your testimony is that you can actually see the
9 torso one way or the other?

10 A At certain points throughout the video you can.

11 Q And you can tell that the torso wasn't moving at
12 all in between those points on the video?

13 A Well, considering that there's -- that you have
14 Sergeant Hendrickson in that position, you have Deputy
15 Blanton in that position, and Deputy Shisler in that
16 position, one area that we're looking at is what is the
17 reaction of those three people on Mr. Kingsley. If he
18 is moving his torso about, I would expect to see them to
19 be moving with him.

20 Q What I'm actually asking you though is whether you
21 can see the torso moving given where the officers are in
22 between Mr. Kingsley and the camera. That's what I'm
23 asking you.

24 A At certain points you can.

25 Q And in between those points, your testimony is that
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1 you can tell -- you can actually see whether or not
2 Mr. Kingsley's upper body is moving?

3 A In between certain points, no, you can't. It's
4 obstructed by the other deputies.

5 Q And so for much of the video, you can't actually
6 tell whether Mr. Kingsley is moving his torso, can you?

7 A Tell or observe? Can you tell?

8 Q All right. I'll ask a better question. For much
9 of the video you can't actually see whether or not
10 Mr. Kingsley's torso is moving underneath Sergeant
11 Hendrickson?

12 A No.

13 Q I'd like to go back to the video. I'm actually
14 going to start it at 6:44:25, close to there. So
15 6:44:30. That's where I've stopped it. And I believe
16 you testified when Mr. Pardon was asking you questions
17 that you can see that Sergeant Hendrickson's knee is
18 directly in the center of Mr. Kingsley's back and on his
19 spine; is that correct? That's what you testified to?

20 A I would have to, I guess, hear my testimony again
21 regarding that specific question.

22 Q Okay. Well --

23 MR. PARDON: And I'll object because this is
24 not the point at which I asked the question.

25 Q Well, let me ask you, because the record will show
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1 what it shows. But at 6:44:30, can you tell where
2 Sergeant Hendrickson's knee is, whether it's on the
3 spine or someplace else?

4 A I believe it's on his back.

5 Q On his back. But you're not saying it's directly
6 on his spine?

7 A It does not appear to be directly centered on his
8 back, no.

9 Q It's across his upper back from one side to the
10 other; correct?

11 A I don't know where exactly his weight distribution
12 is, but appears to be that the knee is over or on the
13 back.

14 Q His leg from his knee to his ankle is placed across
15 Mr. Kingsley's back; correct?

16 A Well, from his right side, yes.

17 Q From Mr. Kingsley's right side to some point on the
18 left side of the upper back; correct?

19 A To the center left, yes.

20 Q And I think you've just testified to this, but you
21 don't know how much weight Sergeant Hendrickson is
22 actually putting on Mr. Kingsley at this point; do you?

23 A No.

24 Q And that's true the entire time in the receiving
25 cell that he has his leg or shin on Mr. Kingsley's back;

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1 correct?

2 A Correct.

3 Q I'm going to play it forward to 6:44:51.

4 (Video played)

5 Stop there. So I believe you testified that at
6 this point, 6:44:51 and just immediately before there,
7 Sergeant Hendrickson pushed down in what you described
8 as a not well articulated motion on his --
9 Mr. Kingsley's head, neck or spine. That was your
10 testimony; correct?

11 A Correct.

12 Q And your testimony -- why don't we go back a few
13 seconds and play it again.

14 (Video played)

15 Your testimony is you can tell it was on his head,
16 neck or spine and not on his back?

17 A I said it appears to be in that area.

18 Q You said in the area of his head, neck or spine;
19 correct?

20 A In the area, yes.

21 Q Okay. It could also have been on his upper back;
22 correct?

23 A Could have been.

24 Q It could have been on his shoulders; correct?

25 A Could have been.

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1 Q By the way, at any point up until this point in the
2 video, did you get any more clarity as to where exactly
3 his leg was on Mr. Kingsley's back?

4 A Up until this point? I would have to, I guess,
5 review the -- can you --

6 MR. JONES: I'll withdraw the question.

7 A Thank you.

8 Q We'll continue forward from here.

9 (Video played)

10 At any point between when we first started playing
11 back again and now, can you tell where Sergeant
12 Hendrickson's leg is on Mr. Kingsley?

13 A Specifically, no.

14 Q You can't see.

15 A No.

16 (Video played 6:45:45)

17 Q Can you tell at all as we play it forward whether
18 Mr. Kingsley is moving?

19 A No.

20 Q Can you see him moving?

21 A Does not appear that he's moving.

22 (Video played 6:45:56)

23 Q I asked you could you tell; could you see whether
24 he was moving.

25 MR. PARDON: Objection. Is it tell or see?
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1 MR. JONES: Okay, I may have asked different --
2 used different words.

3 BY MR. JONES:

4 Q Can you see at any point as we've been playing the
5 video forward from where we first started whether or not
6 Mr. Kingsley is moving under Sergeant Hendrickson?

7 A I can see a portion of Mr. Kingsley's thigh and
8 that does not appear to be moving.

9 Q Are you saying --

10 A I also don't see any of the deputies controlling
11 the torso to be moving.

12 Q Can you see Mr. Kingsley here?

13 A I can see a portion of Mr. Kingsley. I can see the
14 red jail suit between Deputy Shisler and Deputy Blanton.

15 Q Right now?

16 A On my video I can.

17 Q Can you just use words, tell us where you see it?

18 A To the left shoulder going down towards the bicep
19 elbow area of Deputy Blanton and to the right shoulder
20 going down to the elbow area of Deputy Shisler it
21 appears that there's the red jumpsuit of Mr. Kingsley.

22 Q And your testimony is that you're able to tell from
23 there whether or not you can actual see Mr. Kingsley
24 moving?

25 A You've asked me if I can see Mr. Kingsley and I can
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1 see a portion of Mr. Kingsley.

2 Q Can you tell from what you can see of Mr. Kingsley
3 what he was doing with the officers?

4 A It appears that he's laying face down on the bunk.

5 Q Can you see from that little bit whether or not
6 he's moving?

7 A That portion right there does not appear to be
8 moving.

9 (Video continued 6:46:29)

10 Q At any point up until we just stopped it now, is it
11 your testimony you can tell that Sergeant Hendrickson's
12 knee is directly centered on Mr. Kingsley's spine?

13 A If you back up, I believe that was the point of my
14 earlier testimony. I said it appeared to me that his
15 right knee appeared to be by the spine.

16 Q See if we capture it here.

17 (Video played)

18 A Right there. (6:46:26)

19 Q So your testimony is that you can tell that
20 Sergeant Hendrickson's knee in that picture is directly
21 over Mr. Kingsley's spine?

22 A It appears to me it is.

23 Q Okay. Do you know how much pressure Sergeant
24 Hendrickson was exerting with his lower leg at that part
25 of the video?

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1 A No.

2 MR. JONES: We can close out the video.

3 Q Officers are trained in Wisconsin that it's okay to
4 use their legs to stabilize subjects to the ground when
5 they are using handcuffing techniques; correct?

6 THE COURT: I'm sorry, when they are using
7 what?

8 MR. JONES: Handcuffing techniques.

9 THE WITNESS: Yes.

10 BY MR. JONES:

11 Q You have said as much in your written opinions in
12 this case; correct?

13 A I'm sorry, what was that again, sir?

14 Q You wrote a report with your opinions in this case;
15 correct?

16 A Correct.

17 Q I'd like to show you a portion -- I'd like to show
18 you Plaintiff's Exhibit 43. This is the first page of
19 your written report, right, Mr. Landers?

20 A Yes.

21 Q I'd like to refer you to page 15.

22 A Okay.

23 Q And this is still in your written report; correct?

24 A Yes.

25 Q You wrote in your written report in this case as
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1 follows, am I right? I'll just go ahead and read at the
2 bottom of page 15. "The use of one's leg and weight is
3 acceptable in ground handcuffing and multiple officer
4 ground handcuffing techniques to stabilize a person to
5 the ground when they are resisting or potentially
6 dangerous." Correct? You wrote that.

7 A Correct.

8 Q You went on to write: "The placement of any
9 portion of the leg or knee is specifically advised to
10 remain off the spine and neck area and to be placed upon
11 the opposite shoulder muscle; not -- to not only provide
12 greater control, but to also reduce potentially -- a
13 potential of injury." Correct?

14 A Correct.

15 Q Those were your words; correct?

16 A Correct.

17 Q Now there's no evidence that Sergeant Hendrickson
18 actually struck Mr. Kingsley; is there?

19 A Nothing that I observed, no.

20 Q He didn't punch him.

21 A Nothing that I observed or what was reported, no.

22 Q He didn't hit him in the head?

23 A Nothing reported.

24 Q Didn't hit him or punch him in the spine; correct?

25 A Nothing reported.

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1 Q You are familiar with the term *unarmed strike*
2 *technique*?

3 A Yes.

4 Q That's essentially when an officer uses his or her
5 empty hand to strike a subject; correct?

6 A In general, yes.

7 Q And there's no evidence that Sergeant Hendrickson
8 used any unarmed strike techniques on Mr. Kingsley;
9 correct?

10 A There was nothing reported.

11 MR. JONES: If we could pull up Exhibit 108,
12 Plaintiff's Exhibit 108. Publish it to the jury if we
13 can.

14 Q Exhibit 108 again was this diagram of target areas;
15 correct?

16 A Correct.

17 Q And it specifically identifies that the target
18 areas for unarmed strike techniques; correct?

19 A Correct.

20 Q A focused strike, is that another name for an
21 unarmed strike technique?

22 A Yes.

23 Q So focused strikes were not used here; correct?

24 A There was nothing reported.

25 Q You didn't see anything on the video either?
BRIAN LANDERS - CROSS

1 A That wasn't a trained focus strike?

2 Q That was a focused strike.

3 A No.

4 Q If we could pull up Exhibit 517 at page 57. This
5 is page 57 of the POSC Manual; correct?

6 A Correct.

7 Q And we actually go back to 56. It's a section that
8 starts on 56 and rounds off to 57 talking about active
9 counter measures; correct?

10 A Correct.

11 Q Which would include blocking and striking
12 techniques; yes?

13 A Yes.

14 Q So defensively blocking someone or striking them;
15 correct?

16 A Correct.

17 Q If we then go to page 57, the second paragraph, if
18 we can highlight that paragraph. The first -- the top
19 paragraph on what's shown, this is the POSC training
20 guide talking about focused strikes; correct?

21 A Correct.

22 Q And it refers to an Appendix F for target areas for
23 focused strikes; correct?

24 A Correct.

25 Q And that Appendix F is Exhibit 108 that we were
BRIAN LANDERS - CROSS

1 talking about previously; correct?

2 A Yes, it is.

3 Q So the POSC guide is training officers how to use
4 focused strikes and it gives them a guide as to where
5 they should or shouldn't hit someone; correct?

6 A Correct.

7 Q And it uses an exhibit, the one that you referred
8 to, as an exhibit about where they should or shouldn't
9 hit someone; correct?

10 A In this instance, yes.

11 Q And no one hit anyone in what happened with
12 Mr. Kingsley in the receiving cell; correct?

13 A Nothing that was reported.

14 Q Officers are trained at times that it is
15 appropriate to use their hands to stabilize or restrain
16 a subject's head; correct?

17 A Yes.

18 Q There are times where that might be appropriate?

19 A Yes.

20 Q And there are times when it's appropriate to use
21 what I think you referred to as a *pressure point* where
22 you are directly placing pressure on a very specific
23 part of an individual's head; correct?

24 A Correct.

25 Q And in fact, just below the jaw line; correct?

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1 A That's one, yes.

2 Q That's one pressure point.

3 A Right.

4 Q And that's trained to officers in the State of
5 Wisconsin?

6 A Yes.

7 Q And that is a recognized use of force; a trained
8 use of force.

9 A Yes.

10 Q And a pressure point technique, that falls within
11 control alternatives; correct?

12 A Yes.

13 Q That is a technique that can be used to respond to
14 passive resistance; correct?

15 A Yes.

16 Q So at a lower level than an ECD; correct?

17 A Yes.

18 Q You offered the opinion, I think, that the officers
19 might have been more patient with Mr. Kingsley; correct?

20 A Can you repeat that? I'm sorry. I couldn't hear
21 the last part.

22 Q I'm sorry. I was probably looking down. You
23 offered the opinion that the officers should have used
24 more patience with Mr. Kingsley; correct?

25 A That was an option.

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1 Q You're saying it's an option. Are you also saying
2 that they should have done that or not?

3 A No. I'm saying it was asked of me what would have
4 been an option and based upon my training and
5 experience, I felt that was an option.

6 Q But you're not telling us the opinion -- that you
7 have the opinion that they should have used more
8 patience. You're just saying it's an option.

9 A Based on my training and experience that probably
10 would have been the prevailing option.

11 Q I think your words were they should have used a
12 *calmer approach*; correct?

13 A Correct.

14 Q Now from your understanding of events, you
15 recognize that four different officers went to speak to
16 Mr. Kingsley about him removing the paper from the
17 light; correct?

18 A Correct.

19 Q And that was over the course of something like
20 eight to ten hours; correct?

21 A Correct.

22 Q It was only after they had -- four different people
23 had gone to talk to him about that that they decided to
24 actually move him from the cell; correct?

25 A Correct.

BRIAN LANDERS - CROSS

1 Q And you're not offering the opinion that they
2 shouldn't have moved him; correct?

3 A No.

4 Q Now, we've talked about previously that it's
5 potentially dangerous to leave an inmate in a receiving
6 cell or any cell with handcuffs on; correct?

7 A Unattended?

8 Q Sure.

9 A Yes.

10 Q And so at least in theory it was a good idea for
11 the officers to try and take the handcuffs off
12 Mr. Kingsley when they put him in the receiving cell;
13 correct?

14 A Yes.

15 Q And you obviously agree or you heard that they told
16 him a number of times to relax so they could take the
17 cuffs off; yes?

18 A Yes.

19 Q And for whatever reason, that wasn't working;
20 correct?

21 A On video, no.

22 Q And you heard the officers giving him those
23 directives on the audio recording; yes?

24 A Yes.

25 Q And is there something wrong with the way the
BRIAN LANDERS - CROSS

1 officers were communicating with him in the receiving
2 cell?

3 A Could you be more specific?

4 Q Do you have an opinion as to whether the officers
5 communicated with Mr. Kingsley in an appropriate or
6 inappropriate fashion in the receiving cell?

7 A Well, relative to the disturbance resolution, it
8 would appear that they were using heavy control talk:
9 Short loud commands; trying to verbally stun,
10 psychologically stun in the process. I felt that could
11 have been a softer, lesser, more of a persuasion
12 dialogue technique, a calmer technique.

13 Q You're saying they should have used a softer
14 approach in terms of their verbalization?

15 A I'm saying it was an option.

16 Q Did they use heavy control talk the entire time he
17 was in the receiving cell?

18 A Throughout portions of it, I would say the vast
19 majority of the portions, yes.

20 Q We're going to go back to the video. I'm going to
21 play you the video from the hallway itself.

22 (Video played)

23 So we fast forward it until we get to the cell.

24 A There was a portion just prior to that though.

25 Q We'll go back up. Somebody said "What's wrong with
BRIAN LANDERS - CROSS

1 that. Was that heavy control talk or was that calm?

2 A I'm sorry, somebody said what?

3 Q What's wrong with that.

4 A I would say that that's probably search talk,
5 asking a person details about how they're doing.

6 Q Okay. Continue.

7 (Video played)

8 Was that heavy control talk?

9 A I would say that's light control talk.

10 (Video played 6:44:25)

11 Q Was that heavy control talk?

12 A It stopped at, I believe, one of the deputies said
13 "Move your foot, Mike." But there was something
14 starting right after that. (6:44:29)

15 Q We'll play it forward.

16 (Video played)

17 Was that heavy control talk?

18 A That's heavy control talk.

19 (Video played)

20 Q That was heavy control talk.

21 A That's heavy control talk.

22 (Video played)

23 Q Was that heavy control talk?

24 A I would say it's light control. (6:44:57)

25 Q Okay.

BRIAN LANDERS - CROSS

1 (Video played)

2 I know we cut off in the middle, but before that,
3 was that heavy controlled talk?

4 A I would say it's continued light control.

5 (Video played)

6 Q That was heavy control?

7 A Heavy control.

8 (Video played)

9 Q Heavy control talk?

10 A Light.

11 (Video played)

12 Q Still light control talk?

13 A Yeah.

14 (Video played)

15 Q Not control talk.

16 A Persuasion.

17 (Video played)

18 Q Why don't you tell us the next time you hear heavy
19 control talk.

20 A Right there. (6:45:34)

21 Q Okay.

22 (Video played)

23 A I would say that's border.

24 (Video played)

25 A That's heavy control.

BRIAN LANDERS - CROSS

1 (Video played)

2 A Heavy control.

3 Q Officers are trained that there are times when it
4 is appropriate to use heavy control talk; yes?

5 A Yes.

6 Q And heavy control talk is appropriate if light
7 control talk fails to get the subject to cooperate or
8 the situation requires immediate compliance; yes?

9 A Yes.

10 Q And officers are trained that when using heavy
11 control talk, their physical presence, their tone of
12 voice, and their words all must convey intensity and
13 commitment; correct?

14 A Correct.

15 Q And they're also trained that they may issue
16 ultimatums; correct?

17 A Correct.

18 Q They are training they may issue ultimatums in
19 which they can clearly indicate that the subject has to
20 comply.

21 A Correct.

22 Q POSC also teaches jailers that they should
23 accomplish the objective of control as quickly as
24 possible to ensure the safety of officers and inmates;
25 correct?

BRIAN LANDERS - CROSS

1 A In a general concept, yes.

2 Q Jail officers are trained that they should
3 accomplish the correctional objective of control as
4 quickly as possible with minimal chance of injury or
5 death to officers, inmates or others; correct?

6 A That's one of the bullet points, yes.

7 Q If we could turn to page 13. Jail officers are
8 also trained that control is not a 50/50 proposition;
9 correct?

10 A Yes.

11 Q They are trained that controls requires them to be
12 in charge and that physical encounters between officers
13 and inmates need not be a fair, equal contest; correct?

14 A Correct.

15 Q They are trained that it is not a game or a
16 sporting event; correct?

17 A Correct.

18 Q And they are trained as a matter of safety, they
19 are required to control the situation as quickly as
20 possible to ensure their safety and the safety of
21 others, including the subject they are trying to
22 control; correct?

23 A Correct.

24 Q They are trained that the longer a confrontation
25 lasts, the greater the likelihood of injury to all

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1 parties; yes?

2 A Yes. If you notice, this describes the second
3 principle of POSC. The first principle was
4 verbalization skills.

5 Q Fair enough. Officers, jailers that is, are also
6 trained that they always have to maintain a position of
7 advantage with respect to the subject; correct?

8 A Correct.

9 Q And they are trained that that means that they may
10 escalate to a higher level of force than the inmate is
11 using; correct?

12 A Correct.

13 Q We talked about -- not we, you talked about some
14 different types of resistance; correct?

15 A Yes.

16 Q One thing you talked about was resistive tension;
17 correct?

18 A Yes.

19 Q And do I have it right that resistive tension would
20 be something like arms being flexed?

21 A It could be, yes.

22 Q Could be?

23 A Yeah.

24 Q And do I have it right that resistive tension is an
25 indicator of a potential to escalate?

BRIAN LANDERS - CROSS

1 A Yes.

2 Q And officers are trained to take that into account
3 in assessing the level of threat?

4 A Yes.

5 Q And you talked about active resistance; correct?

6 A Yes.

7 Q Active resistance or rather officers are trained
8 that active resistance is when there's behavior that
9 physically counteracts the officer's attempt to control
10 and which creates a risk of bodily harm to the officer,
11 subject or other person; correct?

12 A Correct.

13 Q And that the training guide for law enforcement
14 officers uses essentially the same definition.

15 A Yes.

16 Q So two things: Physical behavior that physically
17 counteracts and a risk of bodily harm; correct?

18 A Correct.

19 Q If we could go to page 53. So this is -- this is a
20 description of control alternatives; correct?

21 A Correct.

22 Q Now this definition, which we've just talked about,
23 does not actually -- the way it's written does not
24 actually require -- strike that.

25 The definition of active resistance as it's trained
BRIAN LANDERS - CROSS

1 to jailers in Wisconsin does not depend on the reason
2 that the subject is engaging in the behavior; correct?

3 A Could you be more specific to that?

4 Q The definition as to what constitutes active
5 resistance does not depend on the subject's motivation;
6 correct?

7 A The definition of active resistance as it relates
8 to bodily harm further describes the Statute 940.19,
9 which is the intent to cause the bodily harm.

10 Q What we've highlighted here and what's shown to the
11 jury in this instance, that is a definition of active
12 resistance drawn directly from the POSC training guide;
13 correct?

14 A It's repeated, but you notice it does have a
15 footnote of 17.

16 Q We'll come to the footnote. I don't want to skip
17 over the footnote.

18 A All right.

19 Q The definition that you are seeing there is a
20 definition of active resistance that officers are
21 trained on; correct?

22 A Yes, it's a definition.

23 Q And that definition does not include any qualifier
24 that the existence of active resistance depends on the
25 motivation of the subject; correct?

BRIAN LANDERS - CROSS

1 A I would say it does, related to the portion of the
2 statute that's required. There must be an intent to
3 harm.

4 Q So you're talking about the footnote?

5 A I'm talking about my knowledge of the active
6 resistance definition is two-fold. The second part of
7 the bodily harm directly relates in the training manuals
8 to the statute of the intent to cause that bodily harm.

9 Q Okay. But does this definition talk about intent?

10 A Well, if you talk about what is the definition of
11 bodily harm, it does.

12 Q Okay. So let's see if footnote 17 defines what
13 bodily harm is. I am going to refer down to the bottom
14 of the same page, 53. We'll highlight for you. This is
15 footnote 17; correct?

16 A Correct.

17 Q And it defines what bodily harm is; correct?

18 A At the time that this was authored it did.

19 Q Okay. Well, this again is the POSC training guide
20 that would be in place on May 21st, 2010; correct?

21 A Correct.

22 Q And so footnote 17 that you said was important to
23 look at defines bodily harm by reference to a state
24 statute as "physical pain or injury, illness or any
25 impairment of physical condition"; correct?

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1 A That's what the footnote is. I don't know if
2 that's the correct statute at the time.

3 Q Okay. Well, this is what jailers, who are being
4 trained in Wisconsin at the time of this incident, were
5 told as to what bodily harm meant; correct?

6 A Possibly.

7 Q Well, I don't understand. You've testified that
8 this is the POSC training guide that was in place at the
9 time of the incident; correct?

10 A Correct.

11 Q And so a jailer being trained about using force in
12 Wisconsin at that time, if they read this definition,
13 footnote 17, this is what they were told as to what
14 bodily harm meant; correct?

15 A I can't testify to what a jailer was told in their
16 training academy.

17 Q That's because you don't do POSC training; correct?

18 A Correct.

19 Q Okay. But you can testify as to what the words on
20 this page say; correct?

21 A Yeah, I can read them.

22 Q And the definition here given of bodily harm does
23 not depend upon the subject's motivation or intent;
24 correct?

25 A Can you repeat that?

BRIAN LANDERS - CROSS

1 Q Sure. The definition of bodily harm that's shown
2 here does not depend on the subject's motivation or
3 intent. Am I correct?

4 A Well, it appears that this is a portion of the
5 statute, not the statute in entirety.

6 Q Okay. But I'm not asking that. I'm asking if the
7 words on the page depend on the subject's intent.

8 A From the wording on that? No.

9 Q And that's --

10 THE COURT: I think at this point I'm going to
11 end the day. I think it's been a long and tense day.
12 Everybody is tired. We'll start tomorrow fresh, I hope,
13 at nine o'clock.

14 MR. PARDON: Your Honor, may I have a word at
15 side bar?

16 THE COURT: Oh, is there a problem?

17 (Discussion at side bar at 5:05 p.m.)

18 MR. PARDON: I'm very, very sorry. I had no
19 idea that Mr. Conroy --

20 MR. JONES: I hear white noise.

21 THE COURT: You can speak up.

22 MR. PARDON: I'm sorry, Your Honor, but
23 Mr. Landers cannot be here until 11 a.m. tomorrow
24 morning. I had no idea that his testimony would go that
25 long.

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1 THE COURT: Do you have any other people you
2 could be calling in the morning?

3 MR. PARDON: We'll be resting our case after
4 Mr. Landers.

5 THE COURT: Do you have anyone you can call at
6 nine o'clock?

7 MR. JONES: We could begin our case if that's
8 what Your Honor -- if that's what we need to do. I
9 obviously would prefer not to begin our case before
10 plaintiff's case is over.

11 MR. PARDON: I don't know how much longer
12 you're going to be.

13 MR. JONES: I haven't taken stock in my outline
14 as to how much longer I'm going to be.

15 THE COURT: You're going to rest after
16 Mr. Landers?

17 MR. PARDON: Yes.

18 THE COURT: How long is your case going to
19 take?

20 MR. JONES: We have, I believe, three officers
21 who will testify: Deputy Blanton, the one taking the
22 handcuffs off, the two defendants, and then you remember
23 we have our expert who can't be here until Wednesday
24 morning first thing. So we would be, I guess, taking
25 four witnesses from 11 p.m. on -- 11 a.m. on tomorrow.

1 THE COURT: Why don't we just start at two
2 o'clock tomorrow afternoon. I've got other things
3 scheduled. That a problem for Mr. Landers?

4 MR. PARDON: I think he told me he is available
5 between 11 and 2:30. And he's available --

6 THE COURT: He is only available from 11 to 2?

7 MR. PARDON: 2:30 yeah. I'm very sorry, I just
8 had no idea Mr. Conroy would take so long.

9 THE COURT: That's okay. We'll start at 11.

10 MR. JONES: Okay. Fine. Thank you.

11 (End of side bar discussion at 5:08 p.m.)

12 THE COURT: Okay. We have a few scheduling
13 problems, so we will not be starting until eleven
14 o'clock tomorrow, and you can plan on a late lunch
15 because I have a number of matters I have to take care
16 of over the lunch hour, other proceedings.

17 And we should get well along tomorrow. Close to
18 finishing. Okay. Not completely, we'll have a little
19 bit on Wednesday morning. All right.

20 Anything else at this time?

21 MR. PARDON: No, Your Honor.

22 THE COURT: Okay. Please remember not to talk
23 about the case. Leave your notepads on your chairs.

24 (Jury excused from courtroom at 5:10 p.m.)

25 THE COURT: All right. Court will adjourn.

1 (Proceedings concluded at 5:10 p.m.)

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3 * * * * *

4 I, LYNETTE SWENSON, Certified Realtime and Merit
5 Reporter in and for the State of Wisconsin, certify that
6 the foregoing is a true and accurate record of the
7 proceedings held on the 15th day of October 2012 before
8 the Honorable Barbara B. Crabb, District Judge for the
9 Western District of Wisconsin, in my presence and
10 reduced to writing in accordance with my stenographic
11 notes made at said time and place.
12 Dated this 29th day of October 2012.

13
14
15 /s/_____

16 Lynette Swenson, RMR, CRR, CBC
17 Federal Court Reporter
18
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